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BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD PERMITTING
AND ENFORCEMENT COMMITTEE

IN THE MATTER OF THE:)
)
PERMITTING AND ENFORCEMENT)
COMMITTEE MEETING)
_____)
 —

REPORTER'S EXCERPT OF PROCEEDINGS

DATE AND TIME: WEDNESDAY, NOVEMBER 6, 1996
 9:30 A.M.

PLACE: BOARD HEARING ROOM
 8800 CAL CENTER DRIVE SACRAMENTO, CALIFORNIA

REPORTER: BETH C. DRAIN, RPR, CSR
 CERTIFICATE NO. 7152

BRS FILE NO.: 36008EX

1 SACRAMETO, CALIFORNIA; WEDNESDAY, NOVEMBER 6, 1996

2 9:30 A.M.

3

4 (ITEMS 1 THROUGH 6 WERE HEARD AND
5 REPORTED, BUT NOT HEREIN TRANSCRIBED. ITEM 7 WAS
6 THEN HEARD AS FOLLOWS:)

7

8 CHAIRMAN FRAZEE: NOW WE'RE READY TO GO
9 TO ITEM 7. THIS IS THE CONSIDERATION OF AUTHORITY
10 TO ADOPT REGULATIONS AND STAFF OPTIONS ON THE
11 REGULATIONS OF NONHAZARDOUS ASH OPERATIONS AND
12 FACILITIES. STAFF REPORT, PLEASE.

13 MS. RICE: THANK YOU. I WILL MAKE A VERY
14 BRIEF PRESENTATION AND THEN TURN IT OVER TO MR.
15 ELLIOT BLOCK FROM OUR LEGAL OFFICE FOR THE BULK OF
16 THE STAFF PRESENTATION.

17 THIS ITEM PRESENTS AN ANALYSIS FOR
18 YOUR CONSIDERATION OF ISSUES RELATED TO THE
19 BOARD'S AUTHORITY TO REGULATE NONHAZARDOUS ASH
20 OPERATIONS AND FACILITIES. BY WAY OF VERY BRIEF
21 BACKGROUND AND CONTEXT, AT YOUR SEPTEMBER MEETING
22 YOU DIRECTED STAFF TO TAKE A NUMBER OF STEPS. NO.
23 1, TO BEGIN THE RULEMAKING PROCESS ON A DRAFT OF
24 REGULATIONS FOR NONHAZARDOUS ASH OPERATIONS AND
25 FACILITIES.

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1 YOU DIRECTED THAT THE REGULATIONS BE
2 NOTICED WITH THE OFFICE OF ADMINISTRATIVE LAW WITH
3 SPECIFIC CHANGES TO THEM REGARDING LEVELS FOR
4 MOLYBDENUM AND SELENIUM AND OTHER CHANGES. THOSE
5 CHANGES WERE MADE AS YOU DIRECTED, AND THE
6 REGULATIONS WERE NOTICED WITH THE OFFICE OF
7 ADMINISTRATIVE LAW FOR A 45-DAY PUBLIC COMMENT
8 PERIOD, WHICH BEGAN ON OCTOBER 25TH AND WHICH WILL
9 END ON DECEMBER 11TH.

10 ANY DECISIONS REGARDING THE
11 APPROPRIATE LEVEL OF REGULATION FOR ASH OPERATIONS
12 AND FACILITIES WHICH YOU MAY MAKE TODAY OR AT
13 SUBSEQUENT COMMITTEE OR BOARD MEETINGS WILL SERVE
14 AS ADDITIONAL DIRECTION FOR CHANGES TO THE DRAFT
15 REGULATIONS WHICH ARE CURRENTLY OUT FOR PUBLIC
16 REVIEW AND COMMENT.

17 YOUR DECISIONS, ALONG WITH PUBLIC
18 COMMENT RECEIVED, WILL DICTATE THE APPROPRIATE
19 NEXT STEPS FOR THIS REGULATORY PACKAGE, SUCH AS
20 ANY REVISIONS AND ADDITIONAL PUBLIC COMMENT
21 PERIODS THAT MAY BE NEEDED ON THAT REGULATORY
22 PACKAGE.

23 ALSO IN SEPTEMBER YOU DIRECTED
STAFF
24 TO INITIATE A PEER REVIEW PROCESS TO PROVIDE
25 ADDITIONAL REVIEW AND COMMENT ON THE

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APPROPRIATE

1 LEVELS FOR MOLYBDENUM AND SELENIUM TO BE
2 REFERENCED IN THE DRAFT ASH REGULATIONS. STAFF
3 HAVE BEEN WORKING WITH BOARD MEMBER OFFICES AND
4 INTERESTED PARTIES IN DEVELOPING THE PROCEDURES
5 AND TIME LINE FOR THE PEER REVIEW PROCESS WHICH
6 HAS NOT YET BEEN INITIATED BY STAFF.

7 AT THIS POINT WE'RE PLANNING TO
8 INITIATE THE PEER REVIEW PROCESS WITH A MAILING TO
9 INTERESTED PARTIES SHORTLY FOLLOWING TODAY'S
10 COMMITTEE MEETING. WE WOULD PROPOSE AT THIS POINT
11 THAT APPROXIMATELY 90 DAYS BE ALLOWED FOR REVIEW
12 AND COMMENT BY INTERESTED PARTIES AND THAT THIS
13 REVIEW PROCESS PROCEED SOMEWHAT INDEPENDENTLY OF
14 THE RULEMAKING PROCESS WHERE APPROPRIATE TIME
15 LINES WILL BE DICTATED BY THE OAL PROCESS.

16 YOU WOULD THEN DETERMINE AT A FUTURE
17 DATE WHETHER INFORMATION GATHERED DURING THE PEER
18 REVIEW PROCESS DEMONSTRATES A NEED TO REVISE THE
19 DRAFT OR FINAL REGULATIONS DEPENDING UPON THE
20 STATUS OF THOSE REGULATIONS WHEN THE PEER REVIEW
21 PROCESS COMES TO CULMINATION.

22 LASTLY, IN SEPTEMBER THE COMMITTEE
23 AND VARIOUS COMMENTERS EXPRESSED INTEREST IN
24 PRESENTATION OF A MORE FUNDAMENTAL AUTHORITY ITEM
25 REGARDING THE BOARD'S AUTHORITY TO REGULATE

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1 NONHAZARDOUS ASH OPERATIONS AND FACILITIES. THIS
2 DISCUSSION TODAY ALSO PROVIDES FOR CONSISTENCY
3 WITH BOARD PROCEDURES FOR PLACEMENT OF OPERATIONS
4 AND FACILITIES INTO THE TIERS.

5 WITH THAT BRIEF INTRODUCTION ON YOUR
6 DIRECTION TO US IN SEPTEMBER REGARDING THIS
7 AUTHORITY ITEM, REGARDING THE PEER REVIEW, AND
8 REGARDING BEGINNING THE PUBLIC COMMENT PERIOD ON
9 THE REGULATIONS, I'D LIKE TO TURN IT OVER TO
10 ELLIOT BLOCK. IN ADDITION, STAFF ARE HERE TO
11 ASSIST YOU WITH ANY QUESTIONS THAT MAY CAME UP.

12 CHAIRMAN FRAZEE: LET ME JUST SAY BEFORE
13 WE HEAR FROM ELLIOT, WE HAVE A SENSE OF A BIT OF A
14 CART BEFORE THE HORSE SITUATION, AND I DON'T THINK
15 THAT WAS ALL BAD. BUT WE HAVE HAD EXTENSIVE
16 TESTIMONY ON THIS ITEM ALREADY BECAUSE THE
17 REGULATION, DRAFT REGULATIONS, WERE OUT AND THE
18 PUBLIC WAS COMMENTING ON THEM.

19 AT THIS POINT WE'RE DEALING WITH THE
20 ISSUE OF AUTHORITY AND OUR ABILITY TO DEAL WITH
21 THAT, MAYBE ENHANCED BY THE FACT THAT WE'VE
22 ALREADY HAD EXTENSIVE TESTIMONY RATHER THAN THIS
23 HAVING BEEN THE STARTING POINT OF THE WHOLE
24 DISCUSSION. SO I THINK IT WAS PROBABLY WORTHWHILE
25 THAT WE WENT THE WAY WE DID ON THIS ITEM.

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1 MR. BLOCK: GOOD MORNING, COMMITTEE
2 MEMBERS. WHAT I PLAN TO DO THIS MORNING IS JUST
3 REALLY BRIEFLY RUN THROUGH PRETTY MUCH IN THE SAME
4 ORDER AS THE ANALYSIS THAT'S IN YOUR AGENDA ITEM
5 TODAY AND GIVE YOU ADEQUATE TIME TO ASK ANY
6 QUESTIONS YOU MIGHT HAVE. AND ALSO THERE ARE A
7 NUMBER OF PEOPLE IN THE AUDIENCE THAT WOULD LIKE
8 TO SPEAK. AND THAT ANALYSIS BEGINS ON PAGE 6 OF
9 THE AGENDA ITEM, WHICH IS PAGE 83 OF YOUR PACKET.

10 JUST BRIEFLY, JUST FOR SOME CONTEXT,
11 I THINK IT'S IMPORTANT TO REPEAT SOME THINGS THAT
12 THE BOARD HAS ALREADY TALKED ABOUT IN THE PAST ON
13 THE AUTHORITY ITEMS, WHAT I KIND OF CALL
14 BACKGROUND ISSUES THAT ARE UP ON THE BOARD, AS
15 WELL UP ON THE MONITOR, ALMOST GROUND RULES, IF
16 YOU WILL.

17 BASICALLY THE BOARD, IN LOOKING AT
18 THESE AUTHORITY ISSUES IN THE PAST, HAS FOUND THAT
19 A MORE EFFICIENT WAY, IF YOU WILL, OF LOOKING AT
20 THESE ISSUES IS REALLY NOT TO LOOK AT THE ISSUE OF
21 THE BOARD REGULATING SOLID WASTE, WHICH GETS US
22 INTO THE WHOLE ISSUE OF WHAT IS A SOLID WASTE, AND
23 REALLY LOOK AT WHAT'S THE OPERATION OR FACILITY
24 THAT WE'RE TALKING ABOUT BECAUSE REALLY WHAT THE
25 BOARD DOES IS -- IS DOING IS OPERATING -- IS

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1 REGULATING A PLACE WHERE SOMETHING IS HAPPENING TO
2 THIS MATERIAL.

3 SECONDLY, JURISDICTION IS A TERM
4 THAT GETS USED IN A LOT OF DIFFERENT WAYS. YOU
5 WILL HEAR ME AND I USE IT IN THE ITEM AS WELL.
6 THE TERM "GENERAL JURISDICTION" BY WHICH I MEAN
7 SORT OF THE BROADER IDEA THAT SOMETHING MIGHT BE
8 WITHIN THE BOARD'S JURISDICTION IF CERTAIN
9 FINDINGS ARE MADE, AS OPPOSED TO A MORE NARROW USE
10 OF THE TERM "JURISDICTION," WHICH I THINK IS WHAT
11 WE'VE DONE IN SOME OF THE AGENDA ITEMS, AND WE'LL
12 TALK ABOUT THAT IN A LITTLE BIT; FOR INSTANCE,
13 MANUFACTURING, WHICH WE'VE SAID IS OUT OF OUR
14 JURISDICTION.

15 WE'VE DONE THAT BASED ON CERTAIN
16 DETERMINATIONS THAT WE'VE MADE, ALTHOUGH
17 THEORETICALLY, DEPENDING HOW YOU WANT TO INTERPRET
18 STATUTE, IT WAS IN THE BALLPARK OF SOMETHING THAT
19 WE WERE LOOKING AT. LIKEWISE, EVEN IF THE BOARD
20 DECIDES SOMETHING IS WITHIN ITS JURISDICTION, IT
21 HAS THE ABILITY TO STILL MAKE A DETERMINATION THAT
22 WE WILL NOT ACTIVELY REGULATE THAT ACTIVITY.

23 THAT'S WITH THE EXCLUDED TIER. THAT'S THE
24 FUNCTION IT PERFORMS IN THE REGULATORY TIERS.
25 AGAIN, ALSO JUST BRIEFLY, BECAUSE I

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1 THINK, AS WE ALL KNOW, THE MAIN ISSUE REALLY THAT
2 WE'RE ADDRESSING IN TERMS OF AUTHORITY TODAY IS
3 LAND APPLICATION. I'LL JUST VERY BRIEFLY GO
4 THROUGH WITH THE PROPOSED REGULATIONS THE PLACES
5 WHERE WE ARE BEING CONSISTENT WITH OUR PAST -- THE
6 BOARD'S PAST DECISIONS REGARDING AUTHORITY. THE
7 PROPOSED REGULATIONS THAT ARE OUT FOR 45-DAY
8 COMMENT RIGHT NOW PLACE DISPOSAL FACILITIES FOR
9 NONHAZARDOUS ASH AND TRANSFER PROCESSING
10 TREATMENT, STORAGE FACILITIES FOR NONHAZARDOUS ASH
11 WITHIN THE TIERS, THE STANDARDIZED TIER AND
12 NOTIFICATION TIER RESPECTIVELY, AND THAT'S
13 CONSISTENT WITH THE AUTHORITY DETERMINATIONS THE
14 BOARD HAS MADE IN THE PAST ON CONTAMINATED SOIL.

15 LIKewise, MANUFACTURING AND, FOR
16 LACK OF A BETTER TERM, WHAT I'VE CALLED OTHER
17 USES, WHICH IS THINGS LIKE ROAD BASE, ICE CONTROL,
18 THOSE TYPE OF ITEMS, WE'RE SHOWING THOSE AS BEING
19 OUTSIDE THE REGULATORY TIERS. IN A SENSE THEY'RE
20 PRODUCTIVE USES OF THOSE THINGS.

21 WHICH LEADS US TO THE NEW LEGAL
22 AUTHORITY ITEM THAT WE'RE DEALING WITH HERE. SEE
23 IF I CAN DO THIS. THESE DEFINITIONS ARE ON PAGE 8
24 OF THE AGENDA ITEM, WHICH I BELIEVE THEN WOULD BE
25 PAGE 85 OF YOUR PACKETS. LAND APPLICATION IS THE

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1 LEGAL AUTHORITY ITEM THAT THE BOARD HAS NOT
2 CONSIDERED SPECIFICALLY BEFORE, WHICH I THINK HAS
3 ENGENDERED MOST OF THE COMMENTS THAT WE'VE GOTTEN
4 SO FAR ON THESE PROPOSED REGULATIONS.

5 AND THERE'S BASICALLY A BIG JUDGMENT
6 CALL THERE IN TERMS OF THE BOARD AND IN TERMS OF
7 HOW IT WANTS TO INTERPRET THE REGULATIONS AND ITS
8 JURISDICTION. WE HAD THE DEFINITION OF DISPOSAL,
9 WHICH TALKS ABOUT FINAL DEPOSITION OF SOLID WASTE
10 ONTO LAND. AND IN TERMS OF LAND APPLICATION, THE
11 ASH IS BEING PLACED ONTO LAND. IT'S FINAL
12 DEPOSITION. IT'S NOT GOING ANYWHERE ELSE.

13 AND WE HAVE THE DEFINITION OF
14 RECYCLING WHICH TALKS ABOUT TAKING MATERIAL AND
15 RETURNING IT TO THE ECONOMIC MAINSTREAM IN THE
16 FORM OF A RAW MATERIAL FOR NEW OR USED OR
17 RECONSTITUTED PRODUCTS, WHICH MEET THE QUALITY
18 STANDARDS NECESSARY TO BE USED IN THE
MARKETPLACE.

19 SO WE HAVE BASICALLY SORT OF TWO
20 ENDS OF THE CONTINUUM, AND WE HAVE A MATERIAL
21 HERE, NONHAZARDOUS ASH, WHICH IS, DEPENDING ON
HOW
22 YOU WANT TO LOOK AT IT, A LITTLE BIT OF BOTH.
23 IT'S BEING PLACED ONTO THE LAND. IT'S FINAL

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24 DEPOSITION, BUT IT'S ALSO POTENTIALLY, SAY IT

THAT

25 WAY, BEING USED FOR BENEFICIAL PURPOSE, SEEMINGLY

1 FITTING WITHIN THE DEFINITION OF RECYCLING.

2 SO IN TERMS OF TRYING TO JUST TEASE
3 OUT, IF YOU WILL, SORT OF A FRAMEWORK FOR TRYING
4 TO RESOLVE THAT ISSUE, I'VE PULLED OUT SORT OF AN
5 OUTLINE OF A COUPLE DIFFERENT QUESTIONS HERE AS A
6 WAY TO SORT OF GIVE A FRAMEWORK TO DEALING WITH
7 THIS QUESTION. AND THE NEXT COUPLE OF CHARTS THAT
8 I'M GOING TO HAVE OVERHEADS ON THAT I'M GOING TO
9 HAVE ARE ON PAGE 13 AND 14 OF THE AGENDA ITEM,
10 WHICH WILL BE PAGE 90 AND 91 OF YOUR PACKET.

11 IN TERMS OF DEALING WITH THOSE TWO
12 DEFINITIONS, THE BOARD'S GOT THREE CHOICES REALLY
13 IN TERMS OF DEALING WITH ASH APPLICATION IN TERMS
14 OF SLOTTING IN TERMS OF WHAT WE DO. DO WE PUT
15 THEM IN THE ENFORCEMENT AGENCY NOTIFICATION TIER,
16 WHICH IS WHERE THE PROPOSED REGULATIONS HAVE THEM?
17 DO WE PUT THEM IN THE EXCLUDED TIER, OR DO WE
18 PLACE THEM WHOLLY OUTSIDE THE REGULATORY TIERS?

19 AND I IDENTIFIED A COUPLE OF
20 DIFFERENT QUESTIONS THAT LEAD TOWARDS ANSWERING
21 THAT QUESTION. ONE IS, GIVEN THOSE TWO
22 DEFINITIONS, DO WE START FROM A PRESUMPTION IN
23 WHAT'S HAPPENING WITH THIS MATERIAL? IN OTHER
24 WORDS, SINCE IT'S BEING PLACED ON THE GROUND,

YOU

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25 WOULD PRESUME THAT IT'S DISPOSAL UNLESS IT'S

1 PROVED OTHERWISE. OR SINCE IT'S BEING ARGUABLY
2 USED FOR A BENEFICIAL PURPOSE, DO WE ASSUME THAT
3 THAT'S, IN FACT, TRUE UNLESS IT'S PROVED TO BE
4 DISPOSAL. IN A SENSE THAT'S MORE -- THAT'S NOT SO
5 MUCH A FACTUAL QUESTION AS SORT OF A BROADER
6 CONTEXTUAL, BUT IN A SENSE WHAT THE BOARD WILL BE
7 DECIDING WILL BE, THAT WILL BE PART OF THE MIX.

8 IF, IN FACT, THE PRESUMPTION IS THAT
9 IT'S DISPOSAL UNTIL PROVEN OTHERWISE, THEN THAT
10 PROBABLY LEADS TOWARDS PLACING THESE IN THE
11 ENFORCEMENT NOTIFICATION TIER. IF THE PRESUMPTION
12 IS THE OTHER WAY, THAT WOULD LIKELY MEAN THAT IT
13 SHOULD BE EITHER IN THE EXCLUDED OR OUT OF THE
14 TIERS. I'LL TALK ABOUT THAT DISTINCTION IN A
15 MINUTE.

16 ALONG WITH THAT PRESUMPTION ISSUE IS
17 THE SECOND ISSUE, WHICH IS PERHAPS MORE INVOLVED,
18 BUT HAS A LITTLE BIT MORE DETAIL AND MAYBE A
19 BETTER ISSUE TO LOOK AT BECAUSE YOU CAN GET A
20 HANDLE ON IT. THAT'S REALLY THE QUESTION OF WHAT
21 DO WE NEED TO DO TO BE ABLE TO DISTINGUISH BETWEEN
22 DISPOSAL AND LAND APPLICATION? AND IT GETS TO THE
23 ISSUE OF THRESHOLDS.

24 ONE OF THE THINGS THAT IS CLEAR,
25 REGARDLESS OF THE BOARD'S AUTHORITY, IS THAT WE'RE

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1 GOING TO HAVE TO ESTABLISH SOME SORT OF DEFINITION
2 FOR WHAT IS LAND APPLI- -- SO ADDITIONAL
3 DEFINITION OF WHAT IS LAND APPLICATION VERSUS WHAT
4 IS DISPOSAL. AND WE'LL TALK ABOUT THIS SOME MORE,
5 AND WE'RE, I'M SURE, GOING TO HEAR ABOUT THIS FROM
6 COMMENTERS, THAT THERE ARE A NUMBER OF DIFFERENT
7 WAYS TO DISTINGUISH BETWEEN THOSE THINGS.

8 AND WHAT I'VE IDENTIFIED IS SORT OF
9 A BROADER QUESTION TO ASK IN CONSIDERING THOSE
10 THRESHOLDS, WHICH IS WHAT LEVEL OF REGULATION IS
11 NECESSARY TO ENSURE THAT SOMETHING REALLY IS LAND
12 APPLICATION VERSUS DISPOSAL? I'VE USED THE TERM,
13 FOR LACK OF A BETTER WAY TO CALL IT, VERIFIED
14 PROACTIVELY. BY THAT I MEAN ADVANCE NOTICE, THE
15 APPLICATION OF STATE MINIMUM STANDARDS, SUCH AS
16 RECORDKEEPING, PERIODIC INSPECTIONS, AND THE LIKE,
17 AS OPPOSED TO A MORE GENERAL STANDARD, WHICH I
18 ALLUDED TO AND I'LL TALK ABOUT A LITTLE BIT LATER,
19 ACTUAL AGRICULTURAL USE, YOU KNOW, MORE GENERAL
20 STANDARD THAT DOESN'T TAKE SPECIFIC ENFORCEMENT
21 MEASURES TO VERIFY.

22 AND AGAIN, THE MORE DETAILED OF A
23 THRESHOLD THAT'S NECESSARY, THE MORE THAT LEADS
24 TOWARDS THE IDEA THAT WE'RE REALLY IN A SITUATION
25 WHERE YOU WANT TO PLACE THESE OPERATIONS HIGHER IN

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1 THE TIERS BECAUSE AS YOU GO LOWER, THE BOARD HAS
2 LESS ABILITY, THE EA'S HAVE LESS ABILITY TO
3 ACTUALLY MAKE ANY OF THESE REQUIREMENTS.

4 IF THE COMMITTEE AND THE BOARD IS AT
5 THE POINT WHERE IT'S TRYING TO CHOOSE BETWEEN THE
6 EXCLUDED TIER AND PLACING THE ASH LAND APPLICATION
7 OUTSIDE OF THE TIERS, THERE'S, AGAIN, I'VE
8 IDENTIFIED A COUPLE OF DIFFERENT QUESTIONS, WAYS
9 TO HELP SORT OF DECIDE WHAT MAKES SENSE THERE.

10 ONE, AGAIN, GOES BACK TO THE WHOLE
11 ISSUE OF THE THRESHOLD, HOW DETAILED THAT IS. IT
12 SEEMS TO ME, JUST IN TERMS OF CLARITY OF THE
13 REGULATIONS, THAT THE MORE DETAILED THAT THRESHOLD
14 IS, IF IT'S GOT CERTAIN MEASUREMENTS THAT NEED TO
15 BE MET, THAT SORT OF THING, FOR INSTANCE, EVEN
16 HEAVY METAL NUMBERS, THAT SORT OF THING, THAT FOR
17 CLARITY PURPOSES, IT WOULD PERHAPS BE USEFUL TO
18 PLACE THOSE OPERATIONS IN THE EXCLUDED TIER
19 BECAUSE IT WILL ALLOW US TO IDENTIFY SEPARATELY
20 THOSE SORT OF REQUIREMENTS AS OPPOSED TO PLACING
21 THEM OUT OF THE TIERS.

22 IF THEY PLACE THEM OUT OF THE TIERS,
23 SOME OF THOSE REQUIREMENTS MAY STILL BE IN THE
24 REGULATION, BUT THEY'LL BE IN A DEFINITION
25 SECTION. SO IN OTHER WORDS, IT WON'T BE AS

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1 OBVIOUS. IT WON'T BE ABLE TO SINGLE THAT OUT. SO
2 THIS IS REALLY NOT SO MUCH A LEGAL AUTHORITY
3 QUESTION, BUT SINCE IT'S PART OF THE -- REALLY
4 PART OF THE MIX, IT'S HARD TO SEPARATE THIS OUT AS
5 AN ISSUE FROM THE DISCUSSION THAT'S GOING TO GO ON
6 TODAY, SO WE FELT IMPORTANT TO RAISE IT.

7 THE SECOND ONE, WHICH IS AGAIN A
8 SECOND QUESTION, SECOND FACTOR, WHICH IS, AGAIN,
9 NOT A LEGAL AUTHORITY ISSUE PER SE, IS THE PUBLIC
10 PERCEPTION THAT RESULTS FROM EITHER PLACEMENT IN
11 THE EXCLUDED TIER VERSUS OUT OF THE REGULATORY
12 TIERS. PLACEMENT IN THE EXCLUDED TIER DOES NOT
13 IDENTIFY -- DOES NOT NECESSARILY IDENTIFY THE
14 OPERATION THAT'S THERE AS A SOLID WASTE
OPERATION.

15 IN FACT, IN THE COMPOST
REGULATIONS

16 THEY'RE SPECIFICALLY WORDED IN SUCH A WAY THAT
IT

17 DOESN'T SAY THAT. WE HAVE HAD IN THE PAST,
18 PARTICULARLY WHEN DEALING WITH THE RECYCLING
LEGAL

19 AUTHORITY ITEM LAST YEAR, SOME CONCERN ABOUT
BEING

20 IN THE BOARD'S TIERS AT ALL AS GIVING THE
21 IMPRESSION THAT, IN THAT CASE IT WAS RECYCLING

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22 FACILITIES WERE BEING REGULATED BY THE BOARD.

IN

23 THIS CASE IT WOULD BE ASH LAND APPLICATION. AND

24 THAT IS VERY CLEARLY NOT A LEGAL AUTHORITY

ISSUE.

25 IT'S A PUBLIC PERCEPTION. IT'S A LEGITIMATE ONE

1 FOR YOU TO BE LOOKING AT, AND I KNOW YOU'LL HEAR
2 ABOUT IT. AND THE CONTEXT THAT IT'S TYPICALLY
3 RAISED IN IS WHAT EFFECT THAT MIGHT HAVE ON
4 DIVERSION ACTIVITIES FROM JURISDICTIONS. OF
5 COURSE, THAT'S SOMETHING ELSE, OBVIOUSLY, THAT THE
6 BOARD CONSIDERS IMPORTANT.

7 ALMOST DONE HERE. FINALLY, THE LAST
8 THING, AND THIS IS, AGAIN, PAGE 91 OF THE PACKET,
9 PAGE 14 OF THE AGENDA ITEM. I'VE LISTED A NUMBER
10 OF ALTERNATIVE METHODS, AND THESE ARE NOT
11 NECESSARILY THE ONLY WAY TO DO THIS, BUT
12 ALTERNATIVE METHODS THAT HAVE BEEN CONSIDERED OR
13 AT LEAST MENTIONED IN THE CONTEXT OF DEVELOPING
14 OUR REGULATIONS FOR SETTING THAT THRESHOLD TO
15 FURTHER DEFINING WHAT THE DISTINCTION IS BETWEEN
16 LAND APPLICATION AND DISPOSAL. AND IN THE ITEM
17 ITSELF, OF COURSE, I MENTION CERTAIN REASONS WHY
18 NOTHING QUITE FITS PERFECTLY, IF YOU WILL, OR AT
19 LEAST SATISFIES EVERYBODY.

20 UTILIZING WASTE DISCHARGE
21 REQUIREMENTS, THE PROBLEM THERE IS THAT MOST --
22 WELL, I'LL JUST SAY MOST ASH LAND APPLICATION
23 SITES DON'T HAVE WASTE DISCHARGE REQUIREMENTS, SO
24 THAT'S NOT SOMETHING THAT WE CAN LINK OUR
25 REGULATIONS TO. I WILL MENTION THAT I'M NOT SURE

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1 IF WAS IT SIGNED. OKAY. JUST IN THE LAST COUPLE
2 OF DAYS THE STATE WATER BOARD HAS ISSUED A MODEL
3 GENERAL WDR'S FOR BIOMASS ASH LAND APPLICATION,
4 WHICH INCLUDES CERTAIN REQUIREMENTS FOR HEAVY
5 METALS AND SOME REFERENCE TO AGRONOMIC PRACTICES,
6 ALTHOUGH IT IS A LITTLE BIT DIFFERENTLY -- PHRASED
7 SOMEWHAT DIFFERENTLY THAN THE BOARD'S REGULATIONS
8 ARE.

9 THAT'S A MODEL GENERAL WDR. IT WILL
10 BE UP TO THE REGIONAL BOARDS TO DECIDE IF THEY
11 WANT TO USE IT OR NOT, AND THEY CAN ALSO MODIFY IT
12 AS THEY WISH. SO IT'S OUT THERE AS A TOOL, BUT
13 AGAIN, IT DOESN'T COVER THE WHOLE FIELD. AND SO
14 IN THE INITIAL TAKE, IN TERMS OF WHAT STAFF WAS
15 DOING, BECAUSE THIS WAS BEING DEVELOPED WHILE WE
16 WERE DEVELOPING THE REGULATIONS, DIDN'T SEE THAT
17 AS AN EASY FIX. IF YOU'VE GOT GENERAL WDR'S, AS
A

18 LAND APPLICATION, YOU'RE A LAND APPLICATION.

19 WE ALSO LOOKED AT OTHER AGENCIES
20 APPROVALS, LOOKING AT FOOD AND AGRICULTURE,
COUNTY

21 AG COMMISSIONERS, BUT SIMILARLY THEY DON'T HAVE
22 ANY SORT OF PERMITTING OR SIMILAR MECHANISM THAT
23 CAN BE EASILY USED TO DISTINGUISH LAND

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APPLICATION

24 VERSUS DISPOSAL ON ITS OWN.

25 ANOTHER ALTERNATIVE WE LOOKED AT
WAS

1 ACTIVE AGRICULTURAL USE, AND THIS IS PRETTY MUCH
2 BASED ON SOME COMMENTS RECEIVED EARLIER DURING
3 SOME INFORMAL WORKSHOPS THAT I'LL PHRASE VERY
4 COLLOQUIALLY, WHICH IS "I'VE GOT A FARM. WHY
5 WOULD I WANT TO HURT MY LAND? OF COURSE, I'M NOT
6 DOING DISPOSAL." THAT MAY WORK IN A LOT OF CASES.
7 IT DOESN'T ALWAYS WORK.

8 WE LOOKED AT THE IDEA OF SAYING, AS
9 LONG AS A CROP IS GROWN WITHIN A YEAR, FOR
10 INSTANCE, AS A MEASUREMENT, WHEN WE TRY TO PUT
11 THESE IN REGULATIONS, THEN THERE'S SOME PROBLEMS
12 WITH THAT BECAUSE IN SOME INSTANCES ASH IS BEING
13 SPREAD FOR A NUMBER OF YEARS BEFORE A CROP IS
14 GOING TO BE GROWN. THERE'S ALSO SOME ISSUES IN
15 TERMS OF LAND APPLICATION ON PASTURE LAND AND
16 FOREST LAND, AND IT'S ANOTHER ONE THAT DEALS
WITH

17 SOME OF THE ISSUES, BUT DOESN'T QUITE TAKE CARE
OF
18 IT -- THE ISSUE ON ITS OWN.

19 THE PROPOSED REGULATIONS, WHICH
WE
20 TALKED ABOUT AT TWO PREVIOUS COMMITTEE
MEETINGS,

21 BASICALLY HAVE -- IT'S REALLY, IN A SENSE, AT

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THE

22 TOP END OF THE SCALE OF THE CONTINUUM. THE

23 PROPOSED REGULATIONS HAVE HEAVY METAL

24 REQUIREMENTS, AGRONOMIC RATES REQUIREMENTS, AND

25 THEN NOTIFICATION TIER, AND SORT OF REALLY

1 OUTLINES THE ISSUES THAT WE HAVE SEEN AS ISSUES
2 THAT NEED TO BE ADDRESSED IN TERMS OF SETTING
THE

3 THRESHOLD. AND WE'VE TALKED ABOUT THAT. I
DON'T

4 WANT TO GO INTO DETAIL ON THAT, BUT I THOUGHT I
5 WOULD MENTION IT AS ONE.

6 AND THEN LASTLY, SINCE THE LAST
7 COMMITTEE MEETING, ANOTHER IDEA HAS BEEN
FLOATED,

8 IF YOU WILL, REGARDING SOME SORT OF USE OF PH
9 LEVELS AS A SIMPLER WAY TO SET A THRESHOLD THAN
A

10 MORE DETAILED REQUIREMENT. AS FAR AS I KNOW,
11 THOUGH, THAT'S STILL BEING WORKED ON. IT
HASN'T

12 REALLY BEEN FINALIZED IN A WAY THAT WE CAN
EASILY

13 DECIDE THAT WE WANT TO USE IT.

14 ONE OF THE THINGS IN PREPARING
THIS

15 ITEM THAT COMES TO MIND, AS I'VE BEEN READING
16 THESE, AND I THOUGHT I MIGHT MENTION IT AS
WELL,

17 IS WHAT WE DO IS HAVE A NUMBER OF DIFFERENT

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WAYS

18 THAT WE CAN POSSIBLY MAKE THESE DISTINCTIONS,

AND

19 EACH OF THEM SEEMS TO HAVE SOMETHING THAT'S NOT

20 QUITE RIGHT WITH IT. SO ONE OF THE THINGS THAT

I

21 THOUGHT I WOULD MENTION, BECAUSE IT'S CERTAINLY

22 WITHIN YOUR PURVIEW AS YOU LOOK AT THESE

ISSUES,

23 IS THAT WE COULD LOOK AT DOING SOME SORT OF

24 COMBINATION OF FACTORS.

25 GIVE YOU THE EXAMPLE OF ACTUAL

1 AGRICULTURAL USE, FOR INSTANCE. IF WE SAID --
2 STAFF AND COMMITTEE CHAIR FRAZEE HAVE VISITED A
3 NUMBER OF ASH APPLICATION SITES, AND A NUMBER OF
4 THOSE SITES ARE ORCHARDS. IT'S VERY OBVIOUS THAT
5 THOSE ARE ACTIVE AGRICULTURAL USES. AND SO IT
6 MIGHT BE APPROPRIATE TO HAVE THAT AS SORT OF A
7 DISTINCTION; BUT IF YOU DON'T HAVE AN ACTUAL
8 ORCHARD, YOU FALL TO ANOTHER MEASURE AS BEING A
9 DISTINCTION. SO THERE'S A LOT OF DIFFERENT WAYS
10 TO DEAL WITH THESE, AND I THINK YOU'RE GOING TO BE
11 HEARING MORE ABOUT SOME OF THEM TODAY.

12 IN A SENSE, WHILE THE THRESHOLD
13 ISSUE IS NOT A LEGAL AUTHORITY ISSUE, REALLY I
14 THINK IT PLAYS INTO THE WHOLE ISSUE AS TO WHAT
15 LEVEL OF REGULATION THE BOARD REALLY NEEDS TO DO
16 BECAUSE, DEPENDING ON WHAT YOU THINK IS AN
17 APPROPRIATE DISTINCTION BETWEEN DISPOSAL AND LAND
18 APPLICATION, THAT REALLY WILL, I THINK, HELP MAKE
19 THE DETERMINATION AS TO WHAT SORT OF AUTHORITY WE
20 WANT TO EXERCISE UNDER THESE OPERATIONS.

21 CHAIRMAN FRAZEE: LET ME -- BEFORE WE GO
22 TO THE PUBLIC COMMENT, LET ME ASK A QUESTION OR
23 TWO. KEEPING IN MIND THAT THE ISSUE, AND THIS IS
24 FOR THE COMMENTERS' BENEFIT, THE ISSUE THAT'S
25 BEFORE US TODAY IS THE LEGAL AUTHORITY TO REGULATE

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1 THAT FULFILL OUR OBLIGATION TO DEAL WITH THE
2 ISSUE?

3 MR. BLOCK: YES. IF THAT DECISION IS
4 MADE, BASED ON LOOKING AT THIS ISSUE AND DECIDING
5 THAT THERE ARE -- WHILE THERE'S A NUMBER OF
6 FACTORS COULD GO INTO IT BUT, FOR INSTANCE, ONE OF
7 THE REASONS MAY BE THAT WE'RE DEALING WITH
8 SOMETHING THAT IS REGULATED BY OTHER ENTITIES
9 AND/OR IT'S A SITUATION WHERE IT REALLY IS NOT --
10 PRIMARILY WHAT WE'RE DEALING WITH IS AGRICULTURAL
11 USE, AND IT'S JUST A FEW EXCEPTIONS THAT ARE
12 DISPOSAL, THEN WE COULD LEAVE LAND APPLICATION
13 OUTSIDE THE REGULATORY TIERS.

14 DISPOSAL IS STILL IN THE BOARD'S
15 REGULATION, AND IT WOULD BASICALLY JUST BE A
16 FACTUAL DETERMINATION ON ANY PARTICULAR SITE. IF
17 THERE'S A COMPLAINT, WE COULD BE LOOKING AT
18 WHETHER THE THRESHOLD IS MET; AND IF THE THRESHOLD
19 IS NOT MET, THEN ACTUALLY THAT OPERATION WOULD END
20 UP BEING IN THE STANDARDIZED TIER AS BEING A
21 DISPOSAL SITE.

22 CHAIRMAN FRAZEE: THEN IN EITHER PLACING
23 IT OUTSIDE THE REGULATORY TIERS OR IN THE EXCLUDED
24 TIER, DO WE HAVE THE ABILITY TO CLASSIFY TYPES OF
25 ASH AT THAT POINT AND, FOR EXAMPLE, SEPARATE INTO

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1 CATEGORIES BIOMASS ASH VERSUS COAL ASH VERSUS ASH
2 FROM BURNED TIRES, WHICH FALLS OVER INTO THE
3 HAZARDOUS CATEGORY, I UNDERSTAND.

4 MR. BLOCK: YOU WOULD HAVE THE ABILITY TO
5 DO THAT. ONE OF THE REASONS THAT WE HAVEN'T IN
6 THE PAST, THAT WAS SOMETHING CAME UP EARLIER IN
7 SOME OF THE WORKSHOPS ON THESE, IS BECAUSE WE WERE
8 AFRAID THAT THAT MIGHT GET A LITTLE BIT
9 COMPLICATED. DEPENDING ON HOW YOU WANT TO
10 IDENTIFY DIFFERENT TYPES OF ASH, IT COULD BE --
11 SOMEBODY ELSE IN THE AUDIENCE MAY KNOW BETTER --
12 BUT AS I RECALL, THERE WERE PERHAPS SEVEN OR EIGHT
13 DIFFERENT TYPES OF WAYS TO TALK ABOUT DIFFERENT
14 TYPES OF ASH BOTH IN TERMS OF THE SOURCE AND/OR IF
15 YOU ARE TALKING ABOUT FLY ASH VERSUS BOTTOM ASH.
16 IT CAN GET FAIRLY COMPLICATED, SO THAT AT LEAST
17 OUR INITIAL TAKE ON TRYING TO DEAL WITH THIS WAS
18 TO TRY TO NOT MAKE THOSE DISTINCTIONS.

19 BUT ONE OF THE THINGS THAT HAS
20 BECOME OBVIOUS IS THAT WE MAY BE IN A SITUATION
21 WHERE, DEPENDING ON WHAT THE BOARD WANTS TO DO,
22 THAT MAY BE APPROPRIATE. AS I MENTIONED, THE
23 WATER BOARD'S MODEL GENERAL WDR'S ARE JUST FOR
24 BIOMASS ASH. LIKEWISE, THE CHARACTERISTICS AND
25 WHAT THE ASH DOES FOR LAND ARE DIFFERENT. THERE'S

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1 DIFFERENCES BETWEEN BIOMASS ASH VERSUS COAL ASH.
2 AND THERE'S, OF COURSE, SOME OTHER SIGNIFICANT
3 DIFFERENCES WITHIN MSW ASH. SO YOU HAVE THE
4 JURISDICTION TO DO THAT.

5 I GUESS I JUST WANTED TO EXPLAIN
6 THAT WE HAVE STAYED AWAY FROM THAT JUST BECAUSE WE
7 THOUGHT THAT MIGHT GET COMPLICATED, BUT IT'S
8 CERTAINLY WITHIN THE BALLPARK OF WHAT COULD BE
9 DONE. AND THERE'S FOLKS IN THE AUDIENCE, I'M
10 SURE, THAT COULD PROBABLY COMMENT A LITTLE BIT
11 MORE ON HOW THEY FEEL ABOUT THIS DISTINGUISHING
12 BETWEEN THE FEEDSTOCK FOR THE ASH.

13 CHAIRMAN FRAZEE: AND I THINK THAT
14 BECOMES A DEFINITIVE POINT IN THIS. IF WE GO TO
15 THE POINT OF EITHER NOT REGULATING OR EXCLUDING,
16 AND WE HAVE A STATUTORY MANDATE TO DO SOMETHING, I
17 DON'T KNOW THAT IT'S APPROPRIATE TO PUT ALL ASH
18 INTO THAT CATEGORY IF WE WERE -- THE SUPPOSITION
19 THAT WE WERE GOING TO GO TO EITHER ONE OF THOSE
20 OPTIONS.

21 I THINK IT'S FAIRLY OBVIOUS THAT WE
22 WOULD NOT WANT TO PUT -- WRITE SOMETHING THAT
23 WOULD LEAD PEOPLE TO BELIEVE THAT HAZARDOUS ASH
24 WOULD FALL IN THAT CATEGORY. AND SO I THINK WE
25 MUST GO TO SOME KIND OF DEFINITIVE MEASURE OF

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1 WHERE THE ASH COMES FROM OR WHAT THE CONTENT IS.

2 SO THAT TAKES ME TO MY NEXT SUPPOSITION.

3 SUPPOSING THAT WE PUT THE BENEFICIAL
4 USE, I.E., AGRICULTURAL LAND APPLICATION OF
5 DEFINED TYPES OF ASH, INTO AN EXCLUDED TIER, DO WE
6 STILL HAVE THE ABILITY TO REGULATE THE CONTENT OF
7 THAT ASH, SPECIFICALLY THE HEAVY METALS LEVEL AND
8 VARIOUS OTHER CONCERNS, IF YOU WERE TO EXCLUDE THE
9 ITEM? OR TO REQUIRE THE NOTIFICATION OF THE
10 CONTENT OF THE ASH AT THE TIME THAT IT'S HELD OUT
11 FOR THAT PURPOSE?

12 MR. BLOCK: WELL, ONE OF MY PATENT
13 ANSWERS WHICH IS YES AND NO. SO LET ME EXPLAIN
14 THAT A LITTLE BIT. EVEN IN THE EXCLUDED TIER AND
15 ACTUALLY EVEN PLACING IT OUT OF THE REGULATORY
16 TIERS, WE CAN SET A THRESHOLD. IN FACT, I THINK
17 THAT'S REALLY ONE OF THE MAIN ISSUES. THAT'S,
18 FRANKLY, GOING TO DETERMINE PERHAPS WHERE WE
19 SLOT -- PLACE SOME OF THESE APPLICATIONS IN THE
20 TIERS. IN SETTING THAT THRESHOLD, WE CAN SET
21 THOSE MEASUREMENTS, HEAVY METALS, AGRONOMIC RATES,
22 ALL OF THOSE CAN BE THERE. THE DIFFERENCE IS NOT
23 SO MUCH IN SETTING THE THRESHOLD. IT'S HOW YOU
24 MEASURE WHETHER THAT THRESHOLD IS MET.

25 IN THE EXCLUDED, THE DISTINCTION

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1 BETWEEN EXCLUDED TIER AND ENFORCEMENT AGENCY
2 NOTIFICATION, THERE'S A COUPLE OF MAIN ONES. ONE
3 OF WHICH WAS THE ENFORCEMENT AGENCY NOTIFICATION
4 TIER. OPERATIONS IN THAT TIER ARE SUBJECT TO
5 STATE MINIMUM STANDARDS, WHICH IS WHERE YOU HAVE
6 RECORDKEEPING REQUIREMENTS AND SPELL OUT WHAT
7 TYPES OF RECORDS NEEDED TO BE KEPT, AS WELL AS
8 PERIODIC INSPECTIONS AS OPPOSED TO INSPECTIONS
9 WHEN A COMPLAINT COMES IN.

10 I BELIEVE THE PROPOSED REGULATIONS
11 RIGHT NOW LEAVE THEM -- LEAVES IT -- IT'S FAIRLY
12 OPEN-ENDED. IT LEAVES IT UP TO THE DISCRETION OF
13 THE LEA. BUT THERE'S AN IMPLICATION THAT THE LEA
14 CAN'T SET A STANDARD. LET'S SAY ONCE A YEAR
15 THEY'LL VISIT AS OPPOSED TO AN EXCLUDED TIER WHERE
16 THERE REALLY IS NO PERIODIC INSPECTION. IF A
17 COMPLAINT OCCURS, THE LEA CAN GO OUT AND LOOK, BUT
18 THERE'S NOT A REGULAR INSPECTION GOING ON.

19 AND SO THE DIFFICULTY IN SETTING --
20 USING SOME MORE INVOLVED THRESHOLDS AND EXCLUDED
21 AND ALSO OUT OF THE TIERS IS WE CAN IN THE
22 REGULATIONS, FOR INSTANCE, LIST THE TYPES OF
23 DOCUMENTS OR EVIDENCE WE THINK COULD BE USED
TO
24 DEMONSTRATE THAT SOMEBODY HAS MET THE

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THRESHOLD,

25 BUT WE CAN'T ACTUALLY REQUIRE THEM TO FILE
THOSE

1 FORMS WITH US. THAT'S REALLY WHERE -- IF YOU
2 WANTED THAT TO HAPPEN, YOU WOULDN'T WANT THESE
3 OPERATIONS IN THE NOTIFICATION TIER.

4 THERE'S A LITTLE BIT OF GIVE AND --
5 IT'S HARD TO DO THIS IN THE ABSTRACT. THERE'S A
6 LITTLE BIT OF GIVE AND TAKE, AND IF WE PLAY A
7 LITTLE BIT AT THE EDGES OF DIFFERENT TIERS IN
8 TERMS OF CERTAIN REQUIREMENTS, BUT OTHER THAN, YOU
9 KNOW, SOME REAL MINOR THINGS, FOR INSTANCE, WE
10 MIGHT BE ABLE TO REQUIRE SOME SORT OF -- I DON'T
11 WANT TO USE THE WORD "NOTIFICATION" -- CONTACT
12 JUST SO AN LEA KNOWS THAT AN EXCLUDED OPERATION IS
13 THERE, BUT NOT SOME SORT OF WRITTEN DOCUMENT THAT
14 THEY HAVE TO SUBMIT BECAUSE ONCE YOU ARE REQUIRING
15 SOMEBODY IN THE EXCLUDED TIER TO SUBMIT, YOU KNOW,
16 A ONE-OR TWO-PAGE DOCUMENT ON WHAT THEIR OPERATION
17 DOES, WELL, THAT'S BASICALLY WHAT THEY'RE REQUIRED
18 TO DO IN THE NOTIFICATION TIER. SO THERE'S A
19 LITTLE BIT OF ROOM FOR LEEWAY, NOT MUCH. THAT'S
20 WHY I SAY YES AND NO.

21 YES, WE CAN IMPOSE SOME STANDARDS,
22 BUT THEY'RE PASSIVE IN THE EXCLUDED TIER. AND
23 THAT'S THE SAME REALLY FOR EVEN OUT OF THE TIERS.
24 WE CAN ESTABLISH SOME STANDARDS BECAUSE WE'LL BE
25 DEFINING LAND APPLICATION AND THEN SAYING IT'S

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1 OUT. AND THE DIFFERENCE THERE IS JUST IT SEEMS TO
2 ME THAT THE MORE DETAILED THAT YOUR THRESHOLD IS,
3 THE MORE YOU MIGHT WANT IT IN A SECTION BY ITSELF
4 SO THAT IT'S REAL OBVIOUS WHAT THOSE REQUIREMENTS
5 ARE AND HOW THAT WORKS. BUT THAT'S, AGAIN, MUCH
6 MORE OF A PUBLIC PERCEPTION ISSUE BETWEEN THOSE
7 TWO.

8 CHAIRMAN FRAZEE: QUESTIONS?

9 MEMBER RELIS: MR. CHAIR, BEFORE WE GO
10 INTO THE PUBLIC COMMENT PERIOD, I'D LIKE TO OFFER
11 A PERSPECTIVE ON WHAT'S BEFORE US. ON, FIRST, THE
12 AUTHORITY ISSUE, I DO BELIEVE WE HAVE THE
13 AUTHORITY AND NEED TO EXERCISE SOME LEVEL OF
14 AUTHORITY.

15 I'VE BEEN IN FAVOR SINCE I'VE BEEN
16 ON THE BOARD OF TRYING TO DEREGULATE MATERIALS
17 THAT, ONCE WE'RE CONFIDENT THEY CAN AND WILL BE
18 RETURNED TO THE ECONOMIC MAINSTREAM, WHICH IS THE
19 KEY PART OF THE DEFINITION OF RECYCLING, THAT WE
20 SHOULD GET OUT OF THE WAY OF THAT AS MUCH AS
21 POSSIBLE.

22 NOW, IN THIS CASE THE INTERFACE IS
23 WITH AGRICULTURE LARGELY. AND I'VE COME TO
24 BELIEVE THAT THE WAY YOU UNDERSTAND WHETHER A
25 MATERIAL IS BEING USED OR NOT IN THE -- UNDER THE

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1 DEFINITIONAL SENSE THAT WE HAVE IN AB 939, THERE'S
2 A LINKAGE OR DEMONSTRATED PRACTICE OF BEHAVIOR
3 THAT DEFINES WHETHER IT'S IN THE ECONOMIC
4 MAINSTREAM OR NOT IN AGRICULTURAL'S CASE. THAT'S
5 WHAT WE CALL AGRONOMIC RATES. AND INCIDENTAL TO
6 THAT ARE MATTERS LIKE STORAGE, BUT STORAGE EVEN
7 TIES IN BECAUSE STORAGE, YOU DON'T STORE SOMETHING
8 AND STOCKPILE BEYOND WHAT YOU NEED TYPICALLY.

9 NOW, HAVING SAID THAT, I'VE BEEN
10 CHASTENED A BIT BY THE EXPERIENCE WE'VE HAD WHERE
11 THE BOARD DECIDED -- I WAS ONE OF THOSE -- TO STEP
12 BACK FROM AN OPPORTUNITY TO REGULATE AN AREA
13 CALLED THE VERMICULTURE MULCH AREA WHERE AT THAT
14 TIME I WAS PERSUADED WE OUGHT TO GET OUT OF THE
15 WAY OF THAT MATERIAL AND SEE HOW, IN FACT, THE
16 MOVEMENT OF, QUOTE, CLEAN GREEN INTO MULCHING
17 OPERATIONS, VERMICULTURE OPERATIONS, WOULD FURTHER
18 THE OBJECTIVES OF AB 939 BY WAY OF RECYCLING AND
19 DIVERSION.

20 IN THAT PARTICULAR CASE I'M
21 CHASTENED BY EVIDENCE THAT SUGGESTS THAT THIS
22 LENIENCY, CALL IT, ON OUR PART HAS BEEN ABUSED AND
23 THAT WE ARE NOW GOING TO HAVE TO, IN MY VIEW,
24 RECONSIDER OUR ROLE THERE. AND NOW WE MAY HAVE TO
25 BE IN A POSITION OF DEALING WITH A FAIRLY LARGE

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1 PROBLEM THAT IS OF A REGULATORY NATURE THAT SPEAKS
2 TO HEALTH AND SAFETY ISSUES THAT CLEARLY FALL
3 UNDER THE AREA OF SOLID WASTE, THE BEHAVIOR,
4 BECAUSE THE BEHAVIOR HAS BEEN ONE THAT CREATES A
5 PATTERN WHERE IT APPEARS OR YOU CALL IT A NEXUS, A
6 PATTERN, IT LOOKS LIKE SOLID WASTE, IT'S BEING
7 MANAGED LIKE SOLID WASTE, AND ALL THE --

8 NOW, WHEN WE COME TO AGRICULTURE, I
9 THINK I'M STRUGGLING FOR TRYING TO GET TO THE
10 LEAST INTRUSIVE OVERSIGHT, BUT ONE WHICH LEADS TO
11 A PERFORMANCE BEHAVIOR THAT IS CLEARLY
12 AGRICULTURAL IN NATURE AND WHICH AGRICULTURE IS
13 COMFORTABLE WITH BECAUSE WITHOUT THEIR COMFORT
14 LEVEL BEING ADDRESSED, WE DON'T HAVE A MARKET.

15 SO IT FRUSTRATES LEVEL. THAT'S WHY
16 I'M SENSITIVE BETWEEN THE EXCLUSION AND WE'LL CALL
17 IT NOTIFICATION. IF IT WE WERE KICKED INTO
18 NOTIFICATION, THE MATERIAL BECOMES SOLID WASTE,
19 CLEARLY. AND FROM THE PERCEPTION OF AGRICULTURE,
20 MOST GROWERS DON'T WANT TO BE ASSOCIATED WITH
21 SOLID WASTE COMING TO THEIR LAND. THAT'S GOT A
22 BIG NEGATIVE AND WE WANT TO PREVENT THAT.

23 SO I THINK IN OUR DELIBERATIONS,

AND

24 I HOPE OUR SPEAKERS CAN HELP US DEAL WITH THESE

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25 MANAGEMENT PRACTICES THAT CAN BE DESCRIBED IN
SUCH

1 A WAY, A LINKAGE, THAT CREATES A CLEAR RECYCLING
2 USE LINKAGE AS OPPOSED TO SOME GRAY AREA THAT
3 HISTORICALLY, AT LEAST WITH THE TWO EXAMPLES I
4 GAVE, HAVE CAUSED US REGULATORY PROBLEMS.

5 SO HAVING SAID THAT, I'M EAGER TO
6 HEAR WHAT PEOPLE SAY.

7 CHAIRMAN FRAZEE: LET ME JUST WRAP UP
8 WITH ONE MORE COMMENT. I TEND TO DRAW PARALLELS
9 ON THINGS OR ANALOGIES. I DON'T KNOW WHETHER
10 THEY'RE VALID OR NOT, BUT LET ME GIVE EVERYONE ONE
11 THAT I SEE IN THIS CIRCUMSTANCE AND STRUGGLING
12 WITH WHAT IS OUR APPROPRIATE ROLE HERE.

13 RELATING TO GOVERNMENT'S ROLE IN
14 REGULATING BEHAVIOR, AND TAKE THE EXAMPLE OF
15 TRAFFIC ENFORCEMENT. YOU KNOW, I THINK THIS IS
16 WHERE MAYBE WE SHOULD BE GOING WITH THIS. WE CAN
17 ALL GO OUT AND DRIVE ON THE HIGHWAY, AND THERE ARE
18 LIMITS TO THE THINGS WE CAN DO. THERE'S A PRIMA
19 FACIE SPEED LIMIT. AND WE'RE NOT REQUIRED BY
20 STATUTE TO FILE A PLAN ON WHERE WE DRIVE AND HOW
21 FAST WE GO. WE DON'T HAVE TO PROVE THAT WE DID.
22 IT'S UP TO THE REGULATORY SIDE OF GOVERNMENT TO
23 PROVE THAT WE DID WRONG.

24 AND THAT'S WHAT I SORT OF FEAR IN
25 THESE REGULATIONS, THAT WE'RE PUTTING THE GUILTY

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1 UNTIL YOU PROVE YOURSELF INNOCENT ROLE IN THIS
2 PARTICULAR ACTIVITY. AND I THINK IN THE TRAFFIC
3 ENFORCEMENT SIDE THERE IS A PARALLEL THERE. THERE
4 ARE SOME REGULATIONS THERE. AND THEY'RE FAIRLY
5 GENERAL. A HIGHWAY PATROLMAN IN STOPPING SOMEONE
6 AND CITING THEM FOR A VIOLATION HAS SOME BROAD
7 LATITUDE. EVEN IF THERE'S A POSTED 65 MILES AN
8 HOUR SPEED LIMIT, THAT HIGHWAY PATROLMAN HAS THE
9 LATITUDE OF CITING SOMEONE FOR DOING 55 IF THE
10 CONDITIONS DO NOT WARRANT THEM DOING 65.

11 SO, YOU KNOW, I THINK THERE IS SOME
12 ABILITY TO PREVENT IN THIS CASE AND DRAWING THAT
13 ANALOGY TO PREVENT THE UNWISE USE OF THIS
14 MATERIAL, BUT STILL ALLOW IT TO BE USED FOR A
15 BENEFICIAL USE WHERE THERE IS NO DANGER TO THE
16 PUBLIC, THAT IT'S NOT CREATING A SITUATION OF
17 VIOLATING OUR TRUST AND OUR REQUIREMENT TO
PROVIDE

18 FOR HEALTH, SAFETY, AND THE ENVIRONMENT.

19 AND THAT'S WHERE I WOULD LIKE TO
GO

20 WITH THIS ITEM, TO PROVIDE SOME ASSURANCE THAT
21 IT'S NOT BEING DISPOSED OF IMPROPERLY, BUT TO
GET

22 HANDS OFF ON THE BENEFICIAL USE AND APPLICATION

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OF

23 THIS ITEM. SO LET'S GO TO -- DO YOU HAVE

24 ANYTHING, MR. PENNINGTON?

25 MEMBER PENNINGTON: NO.

1 CHAIRMAN FRAZEE: GO TO PUBLIC COMMENT
2 AND THEN, AGAIN, TO REMIND THOSE THAT ARE HERE
3 WHAT WE'RE DEALING WITH IS NOT THE REGULATIONS
4 THEMSELVES, BUT THE AUTHORITY TO REGULATE THE
5 ISSUE IN THIS PARTICULAR CIRCUMSTANCE AND WHAT THE
6 APPROPRIATE EXTENSION OF THAT AUTHORITY IS.

7 WE HAVE A NUMBER OF LEA'S, AND I
8 THINK WE WILL GO THROUGH THOSE FIRST, STARTING
9 WITH ED PADILLA, SAN JOAQUIN COUNTY.

10 MR. PADILLA: GOOD MORNING. ED PADILLA
11 FROM SAN JOAQUIN COUNTY LEA. AND WE AGREE WITH
12 THE COMMITTEE, THAT THE WASTE BOARD DOES HAVE
13 AUTHORITY TO REGULATE ASH TO LAND APPLICATION.

IN

14 OUR OPINION, ASH TO LAND APPLICATION IS FINAL
15 DEPOSITION OF A SOLID WASTE ON THE LAND. WHETHER
16 OR NOT IT'S BEING LANDFILLED OR BEING LAND
SPREAD,

17 IF YOU WANT TO CALL IT BEING REUSED, THIS
ACTIVITY

18 CONSTITUTES FINAL DISPOSAL AND SHOULD BE
19 REGULATED.

20 WE DO HAVE A PUBLIC HEALTH CONCERN,
21 PROBABLY UNIQUE TO SAN JOAQUIN COUNTY, AND THAT
IS

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22 THE DELTA WETLANDS AREA, AN AREA OF OVER 700,000
23 ACRES. AND IT IS A RECOGNIZED PACIFIC FLYWAY FOR
24 MIGRATORY BIRDS. FIFTY PERCENT OF ALL MIGRATORY
25 DUCKS AND GEESE USE THE DELTA IN THE UNITED

1 STATES.

2 THERE ARE 71 SPECIAL STATUS SPECIES
3 OF PLANTS, BIRDS, MAMMALS, REPTILES IN THE DELTA.
4 THERE ARE ALSO 11 RARE ENDANGERED SPECIES IN THE
5 DELTA THAT ARE PROTECTED UNDER THE FEDERAL
6 ENDANGERED SPECIES ACT, SUCH AS THE DELTA GREEN
7 BEETLE AND THE ALEUTIAN CANADIAN GOOSE WHICH
8 WINTERS IN THE DELTA AREA.

9 THE UNITED STATES FISH AND WILDLIFE
10 HAS DESIGNATED THE AGRICULTURAL LANDS IN THE DELTA
11 AS FARM WETLANDS. THERE'S MANY UNIQUE AREAS IN
12 CALIFORNIA, AND THE DELTA CERTAINLY IS ONE. AND
13 WE THINK THAT THE CRITERIA IN THESE REGS, IF AT
14 ALL, ONLY MINIMALLY ADDRESS THE POSSIBLE HARM TO
15 WILDLIFE AND WILDLIFE HABITAT.

16 THE DISPOSAL OF ASH OVER LONG
17 PERIODS OF TIME MAY RESULT IN CONCENTRATIONS,
18 ACCUMULATIONS OF HEAVY METALS THAT COULD IMPACT
19 SEASONAL WILDLIFE USE IN AGRICULTURAL LANDS IN
20 THE
21 DELTA. EIGHTY PERCENT OF THE ORIGINAL DELTA
22 WETLANDS HAVE ALREADY BEEN LOST.

23 WE ALSO BELIEVE THAT THE -- I
24 HAVEN'T SEEN ANY STUDIES THAT ASSURES US THAT
THE
WILDLIFE HABITAT IN THE DELTA WILL NOT BE

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HARMED.

25

ONE MONTH AGO THE DELTA PROTECTION

1 COMMISSION PROHIBITED LAND APPLICATION OF SEWAGE
2 SLUDGE IN THE DELTA AREA, AND I THINK THE DELTA
3 COMMISSION IS VERY CONCERNED ABOUT WHAT GOES ON
4 THE FARMLANDS AND THAT THIS DOES HAVE AN IMPACT TO
5 WILDLIFE AND WILDLIFE HABITAT.

6 ALSO, ASH SPREADING AND DISKING ON
7 FALLOW LAND DOES DISTURB WILDLIFE HABITAT. IF
8 THESE REGULATIONS ARE NOT APPROVED OR ARE FURTHER
9 WATERED DOWN, I THINK MANY AGRICULTURAL COUNTIES
10 IN THE CENTRAL VALLEY WILL PASS MORE STRINGENT
11 ORDINANCES. AND I THINK THE GOAL OF UNIFORM STATE
12 ENFORCEMENT, WHICH WE'RE TRYING TO ACCOMPLISH
13 HERE, WILL NOT OCCUR.

14 I THINK THE ONLY THING THAT I'VE
15 BEEN IMPRESSED WITH SO FAR IS THE LACK OF STUDIES
16 IN THIS AREA OF ASH TO LAND APPLICATION. IF YOU
17 COMPARE THAT TO THE MANY, MANY STUDIES DONE IN THE
18 SEWAGE TO LAND APPLICATION, THERE'S QUITE A
19 DIFFERENCE THERE.

20 SO WHAT ARE WE BASING THESE
21 REGULATIONS ON? I THINK BEFORE GRANTING AN
22 EXEMPTION TO THE ASH INDUSTRY, ASH TO LAND
23 APPLICATION SHOULD BE STUDIED MORE THOROUGHLY TO
24 EVALUATE WHETHER ASH DISPOSAL HAS AN ADVERSE
25 IMPACT TO WILDLIFE AND WILDLIFE HABITAT.

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1 THANK YOU.

2 CHAIRMAN FRAZEE: LET ME JUST ASK A
3 COUPLE QUESTIONS. SAN JOAQUIN COUNTY IS ONE THAT
4 HAS BY ORDINANCE BANNED THE LAND APPLICATION OF
5 ASH TO AGRICULTURAL LANDS.

6 MR. PADILLA: NO, IT'S NOT. NO. THEY'RE
7 REQUIRED TO TAKE A PERMIT. THERE HAS BEEN --

8 CHAIRMAN FRAZEE: THEY STILL ALLOW IT
9 WITH A PERMIT?

10 MR. PADILLA: YES. THERE WAS SEVERAL
11 SITES THAT DID HAVE PERMITS, BUT THEY HAVE
12 SINCE -- THAT'S BEEN SEVERAL YEARS AGO. NOBODY
13 ELSE HAS APPLIED SINCE THAT TIME.

14 MEMBER PENNINGTON: IS IT BECAUSE THEY
15 WON'T ISSUE A PERMIT?

16 MR. PADILLA: NO. WHAT WE FOUND WAS THAT
17 MANY OF THE PEOPLE IN THE ASH INDUSTRY, WE HAD
18 SEVERAL THAT CAME TO US SEVERAL YEARS AGO. THEY
19 WEREN'T INTERESTED IN TAKING OUT A PERMIT WITH OUR
20 COUNTY, SO THEY DIDN'T OPERATE IN OUR COUNTY.
21 THEY WENT TO ANOTHER COUNTY WHERE THEY FELT IT
22 WASN'T QUITE AS RESTRICTIVE.

23 CHAIRMAN FRAZEE: AND THAT PERMIT DEALS
24 ONLY WITH ASH OR WITH OTHER PRODUCTS ALSO?

25 MR. PADILLA: WELL, IT DEPENDS WHAT YOU

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1 ARE GOING TO APPLY FOR. YOU CAN APPLY FOR ASH OR
2 SEWAGE SLUDGE. WE DO HAVE A COUPLE OF SEWAGE
3 SLUDGE LAND APPLICATIONS IN THE COUNTY UNDER
4 PERMIT.

5 CHAIRMAN FRAZEE: BUT A COMMERCIAL LIMING
6 AGENT WOULD NOT REQUIRE A PERMIT?

7 MR. PADILLA: NO.

8 CHAIRMAN FRAZEE: SO THE CIRCUMSTANCE, IF
9 YOU WERE TO TAKE THE SAME PRODUCT, COAL ASH, FROM
10 A COGENERATION PLANT THAT WAS PRODUCED IN UTAH AND
11 PUT IT IN BAGS WITH A CHEMICAL ANALYSIS ON THE
12 OUTSIDE OF IT, AND BROUGHT IT TO SAN JOAQUIN
13 COUNTY, IT COULD BE APPLIED WITHOUT REGULATIONS?

14 MR. PADILLA: IF IT WAS ASH FROM COAL,
15 THEY WOULD REQUIRE A PERMIT. IF WE DIDN'T KNOW
16 ABOUT IT, THEN WE WOULDN'T KNOW ABOUT IT. IF WE
17 KNEW ABOUT IT, WE WOULD REQUIRE THAT THEY TAKE OUT
18 A PERMIT.

19 CHAIRMAN FRAZEE: OKAY.

20 MEMBER RELIS: MR. CHAIR, I'D LIKE TO
21 PURSUE THAT SAME POINT BECAUSE I'M A LITTLE
22 UNCLEAR. SUPPOSE I'M USING A COMMERCIAL
23 FERTILIZER, OKAY, THAT'S MY REGULAR AGRICULTURAL
24 PRACTICE IN WHAT YOU CALL THE -- OR THE TERM IS A
25 FARM WETLAND. DOES THE -- IS THERE REALLY ANY

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1 OVERSIGHT OR REGULATION OF THAT USE?

2 MR. PADILLA: I THINK THERE ARE SOME, BUT
3 I THINK --

4 MEMBER RELIS: VIS-A-VIS FARMED WETLAND
5 AND THE WILDLIFE CONCERNS.

6 MR. PADILLA: YOU TALKING ABOUT -- I
7 THINK THAT'S PROBABLY SOMETHING THAT COUNTY AG
8 COMMISSION WOULD PROBABLY TALK TO. I THINK THERE
9 ARE SOME CONDITIONS, BUT MAYBE LIMITED.

10 MEMBER RELIS: OKAY.

11 MR. PADILLA: I'M NOT SURE.

12 MEMBER RELIS: WHAT I'M TRYING TO GET
13 BACK TO IS THE QUESTION THAT YOU RAISED. I THINK
14 YOUR FUNDAMENTAL QUESTION IS WHAT ARE WE BASING
15 THESE REGULATIONS ON. IN OTHER WORDS, WE HAVE A
16 MATERIAL, WE CALL IT, FOR PURPOSES OF -- THAT
17 WANTS TO BE USED IN AN AGRICULTURAL CONTEXT. AND
18 YOU ARE SAYING, WELL, WHAT ARE WE -- WHAT'S OUR
19 FINDING -- WHAT WOULD BE OUR FINDING -- WHAT ARE
20 THE FINDINGS REGARDING ALL AMENDMENTS RELATED TO
21 AGRICULTURE. I MEAN YOU SAID YOU'VE STUDIED
22 SEWAGE SLUDGE, BUT THERE ARE MANY OTHER
AMENDMENTS

23 THAT GO INTO AGRICULTURAL PRACTICE.

24 MR. PADILLA: MAYBE I'M JUST FOCUSED IN
25 BECAUSE I WORK IN SOLID WASTE ENFORCEMENT. AND

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1 SINCE SEWAGE SLUDGE IS CONSIDERED A SOLID WASTE,
2 I'VE LOOKED AT THOSE. I DON'T HAVE THE TIME TO
3 SPEND DOING THE WORK FOR THE AG DEPARTMENT IN
4 STUDYING THOSE. AND THERE ARE CONCERNS, I KNOW,
5 WITH DIFFERENT TYPES OF FERTILIZERS, BUT I HAVEN'T
6 FOCUSED IN ON THAT BECAUSE THAT'S NOT MY
7 DIRECTION. AS FAR AS ASH IS CONCERNED, I JUST SEE
8 A LACK OF STUDIES HERE. I'M -- I WAS SURPRISED AT
9 HOW MANY STUDIES I'VE SEEN FOR SEWAGE SLUDGE AND
10 THE LACK I'VE SEEN FOR THE ASH.

11 MEMBER RELIS: BUT YOU ARE TALKING ABOUT
12 STUDIES SPECIFICALLY BEARING --

13 MR. PADILLA: STUDIES SPECIFICALLY --

14 MEMBER RELIS: WITH RESPECT TO IMPACT ON
15 WILDLIFE.

16 MR. PADILLA: WELL, NOT NECESSARILY.
17 IT'S IMPACT ON GROWTH OF THE CROPS. I MEAN
18 THERE'S MANY STUDIES DONE ON SEWAGE SLUDGE ON THE
19 GROWTH CROPS, WHAT TYPE OF RISKS AND PUBLIC HEALTH
20 ASSOCIATIONS AND EATING CROPS COMING FROM THAT.
21 THAT'S WHAT'S LACKING IN THE ASH INDUSTRY.

22 AND THEN THE DELTA AREA IS VERY
23 UNIQUE TO CALIFORNIA, AND THERE'S A CONCERN THERE
24 BECAUSE MANY OF THE WILDLIFE THERE DOES -- YOU
25 KNOW, THEY ARE GOING TO THE FARMLANDS. THEY DO

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1 EAT THE FOOD OFF THE CROPS THERE. AND
2 DISCOURAGING THEM NOT TO. THEY DO. THAT IS A
3 CONCERN.

4 CHAIRMAN FRAZEE: THANK YOU. NOW, NEXT
5 IS MIKE GNEKOW -- IS THAT CORRECTLY PRONOUNCED? -

-
6 LEA FROM KERN COUNTY.

7 MR. GNEKOW: GOOD MORNING. MIKE GNEKOW,
8 KERN COUNTY LEA, G-N-E-K-O-W. I'LL BE BRIEF.

9 WE IN KERN COUNTY HAVE EXPERIENCED
10 QUITE A BIT OF THIS ASH DISPOSAL, NOT ONLY IN THE
11 AGRICULTURAL SETTING, BUT ALSO WE'VE HAD ROADS
12 BUILT, AIRPORTS BUILT, AIRSTRIPS BUILT, AND
13 CANYONS FILLED WITH THIS MATERIAL.

14 IN ADDITION TO THAT, WE'VE HAD THE
15 MATERIAL SPREAD ON AGRICULTURAL LANDS. IT'S
16 DEFINITELY FOR AGRICULTURAL USE, AND CROPS AREN'T
17 GROWN WITHIN TWO TO THREE YEARS. SO WE FEEL THAT
18 AT A MINIMUM, WHEN YOU ARE GOING TO DISPOSE OF IT
19 ON THE LAND FOR AGRICULTURAL USE OR RECLAMATION,
20 THAT IT SHOULD BE PLACED IN THE ENFORCEMENT
AGENCY

21 NOTIFICATION TIER.

22 WE HAVE HAD INSTANCES WHERE IT WAS
23 SPREAD, AND IT WAS -- THE PH WAS 12.5, WHICH
MAKES

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24 IT A HAZARDOUS PRODUCT. WE HAVE HAD SEVERAL
25 INSTANCES OF HIGH LEVEL OF HEAVY METALS ALSO. SO

1 I THINK THAT, WHILE SELF-CERTIFICATION IS, TO THE
2 EXTENT WE CAN DO IT, THE WAY TO GO, WE FEEL THERE
3 HAS TO BE SOME TYPE OF PLAN OF OPERATION IN PLACE
4 THAT WE CAN CHECK ON PERIODICALLY OR CAN BE
5 CERTIFIED PERIODICALLY SO THAT WE CAN BE AWARE OF
6 WHERE THIS IS BEING APPLIED AND, HOPEFULLY, HAVE
7 SOME TYPE OF ANALYSIS OF MATERIAL THAT IS BEING
8 PLACED ON THE GROUND.

9 WE'VE ALSO RECEIVED COMPLAINTS
10 REGARDING THE TRANSPORTATION AND APPLICATION OF
11 IT. THE MATERIAL EVIDENTLY HAS A CONSISTENCY OF
12 TALCUM POWDER, THAT TYPE OF THING. AND IF THE
13 TRUCKS AREN'T SECURELY TARPED, IT WILL BLOW OUT.

14 WE'VE BEEN ADVISED THAT AS IT'S
15 BEING APPLIED TO THE LAND, THAT THERE'S QUITE A
16 BIT OF AIRBORNE PARTICULATES ASSOCIATED WITH THAT
17 OPERATION. SO BASED ON THOSE TYPES OF COMPLAINTS,
18 WE FEEL THAT IT SHOULD BE, AS FAR AS THE LAND
19 APPLICATION, IT SHOULD BE PLACED IN THE
20 ENFORCEMENT AGENCY NOTIFICATION TIER.

21 CHAIRMAN FRAZEE: LET ME AT THAT POINT
22 JUST TAKE A STEP AT NOTIFICATION ONLY TO KNOW
23 WHERE IT'S BEING APPLIED, OR DO YOU WANT TO BE IN
24 THE BUSINESS OF REGULATING AGRICULTURAL PRACTICES
25 AND DEALING WITH SOILS EXPERTS AND LOOKING AT EACH

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1 INDIVIDUAL APPLICATION HAVING THAT PERMIT.

2 MR. GNEKOW: I THINK WE WOULD WANT TO
3 KNOW WHERE IT'S BEING APPLIED, THE SOURCE OF IT, A
4 TYPICAL ANALYSIS, VERY MINIMAL, MAYBE QUARTERLY,
5 MAYBE ANNUAL INSPECTION TO MAKE SURE THAT CROPS
6 ARE BEING GROWN.

7 I MEAN WE THINK THAT, YOU KNOW, AS
8 MR. RELIS SAID, YOU JUST DON'T KEEP PUTTING THIS
9 STUFF ON THE LAND AND NEVER GROW ANYTHING.
10 THERE'S AGRONOMIC RATE INVOLVED HERE. THERE'S AN
11 AGRONOMIC PRACTICE INVOLVED. AT THIS POINT WE'RE
12 JUST NOT SEEING THAT IN THIS ONE PARTICULAR
13 INSTANCE.

14 CHAIRMAN FRAZEE: OKAY. ANYTHING ELSE?
15 THANK YOU. NOW MARGARET BLOOD, AMADOR COUNTY LEA.

16 MS. BLOOD: THANK YOU. I'M WITH AMADOR
17 COUNTY. ALTHOUGH WE DON'T HAVE ANY LAND SPREADING
18 OF ASH IN OUR COUNTY CURRENTLY, WE WOULD LIKE TO
19 SUPPORT THE REGULATION OF NONHAZARDOUS ASH AT THE
20 NOTIFICATION TIER.

21 WE'RE CONCERNED THAT AS THIS BECOMES
22 A PROBLEM IN THE VALLEY COUNTIES, THEY WILL IMPOSE
23 THEIR OWN LOCAL ORDINANCES, AND WE'LL START SEEING
24 THIS APPLICATION IN FOOTHILL COMMUNITIES. WE
25 DON'T BELIEVE THAT THE FOOTHILLS, FROM A STATEWIDE

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1 PERSPECTIVE, WOULD BE A GOOD PLACE TO DISPOSE OF
2 ASH.

3 I THINK ASHES ARE CLEARLY DEFINED AS
4 SOLID WASTE, AND THE NOTIFICATION TIER, THE
5 REQUIREMENTS THERE ARE NOT OVERBURDENSOME IN THE
6 LEAST. THEY'RE MERELY ASKING FOR SOME IDENTIFYING
7 INFORMATION IN ORDER TO MAKE A WELL-THOUGHT OUT
8 DECISION AS TO THE APPLICATION OF THIS MATERIAL.

9 IT SEEMS THAT WHAT HAS BEEN BROUGHT
10 UP IS BY PUTTING ASH IN THE NOTIFICATION TIER,
11 THAT MAKES IT SOLID WASTE. THE ASH IS A SOLID
12 WASTE WHETHER YOU HAVE IT IN EXCLUDED TIER OR IF
13 YOU PUT IT OUT OF THE TIERS. IT'S STILL A SOLID
14 WASTE, AND IT'S APPROPRIATELY IN THE NOTIFICATION
15 TIER FROM OUR POINT OF VIEW BECAUSE THERE IS SOME
16 CONTROL THERE TO EVALUATE THE USE OF THAT PRODUCT.

17 THAT CONCLUDES MY COMMENTS.

18 CHAIRMAN FRAZEE: OKAY. THANK YOU.
19 QUESTIONS? NEXT, FRANCES SULLIVAN, COUNTY
20 SUPERVISOR IN SHASTA COUNTY.

21 SUPERVISOR SULLIVAN: MR. CHAIRMAN,
22 MEMBERS OF THE BOARD, THANK YOU VERY MUCH FOR
23 ALLOWING ME TO SPEAK. I AM A SHASTA COUNTY
24 SUPERVISOR. I REPRESENT THE EASTERN HALF OF OUR
25 COUNTY, WHICH HAS A NUMBER OF COGENERATION PLANTS.

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1 AS YOU ALL KNOW, SHASTA COUNTY IS THE LARGEST
2 PRODUCER OF ASH IN THE STATE WITH SOME 60,000 TONS
3 ANNUALLY.

4 WE ALSO HAVE A VERY SUCCESSFUL ASH
5 DIVERSION PROGRAM IN OUR COUNTY THAT HAS A PROVEN
6 TRACK RECORD. WE'VE BEEN USING THIS PROGRAM FOR
7 EIGHT TO TEN YEARS IN OUR COUNTY. WE THINK MANY
8 OF THE ISSUES THAT HAVE BEEN BROUGHT UP TODAY HAVE
9 BEEN ANSWERED AND ADEQUATELY ADDRESSED IN THE
10 PROGRAMS THAT WE'VE ALREADY BEEN DOING.

11 AS FOR THE ISSUES OF THEM BEING
12 OVERSIGHT AND REGULATION, WE FEEL THAT THEY'RE
13 ALREADY VERY ADEQUATELY REGULATED. FOOD AND
14 AGRICULTURE MEASURES THE MINERAL CONTENT AND ALSO
15 TESTS FOR METAL. AIR POLLUTION CONTROL DISTRICT
16 IS INVOLVED. STATE WATER QUALITY PEOPLE ARE
17 INVOLVED. AND I DON'T THINK YOU HAVE TO GO VERY
18 FAR TO KNOW HOW CLOSELY FISH AND GAME MONITORS
ANY
19 KIND OF ACTIVITY THAT THEY THINK IS DETRIMENTAL
TO
20 WILDLIFE.

21 SO AS I'VE SAID, WE'VE BEEN DOING
22 THIS FOR EIGHT TO TEN YEARS. WE REALLY FEEL
THOSE
23 ISSUES HAVE BEEN TESTED AND PROVEN THAT THEY'RE

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24 NOT PROBLEMS.

25 AND, YOU KNOW, USING THE EXISTING

1 PROGRAM WITHOUT ANY MASSIVE OVERSIGHT ALSO HAS
2 ALLOWED THIS ASH TO BE USED AS A BENEFICIAL SOIL
3 AMENDMENT IN OUR COUNTY. CLASSING ASH AS A WASTE
4 PRODUCT HAS GREAT POTENTIAL OF ELIMINATING OUR
5 USING ASH IN THIS WAY. AND I THINK IT PROBABLY
6 DOESN'T TAKE MUCH OF A REACH TO SEE THE "NATIONAL
7 ENQUIRER" HEADLINE THAT SAYS "WASTE DUMPED ON OUR
8 FOOD PRODUCTS," AND SEE THAT THIS PROCESS PROBABLY
9 WOULDN'T HAVE MUCH LONG LIFE AFTER THAT.

10 AND I BELIEVE THAT IN OTHER CASES
11 YOU HAVE USED THAT AS A GUIDELINE IN DETERMINING
12 THAT SOME PRODUCTS WERE NOT WASTE PRODUCTS, SOME
13 ASH PRODUCTS WHERE YOU'VE SAID THAT THERE WAS A
14 BENEFICIAL USE THAT WAS A POSSIBILITY AND,
15 THEREFORE, IT WASN'T NECESSARY TO CLASSIFY IT AS A
16 WASTE.

17 I THINK OUR PROGRAM IS A CLASSIC
18 EXAMPLE OF WHAT SHOULD BE ENCOURAGED AND SUPPORTED
19 RATHER THAN STIFLED. WE TAKE A BY-PRODUCT OF A
20 PROCESS THAT'S BENEFICIAL TO THE COMMUNITY,
21 COGENERATED POWER WHICH USES WASTE PRODUCTS TO
22 PROVIDE A POSITIVE PRODUCT, FUEL, AND THEN WE'RE
23 USING THE BY-PRODUCTS OF THAT PROCESS TO PROVIDE
24 ANOTHER BENEFICIAL USE TO THE COMMUNITY AND TO
25 SOCIETY, AND THAT IS THE ABILITY FOR US TO

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1 INCREASE OUR AMERICAN GROWN FOOD CROPS, WHICH
2 BENEFITS EVERYONE.

3 WE REDUCE THE WASTE STREAM, WE ADD
4 PRODUCTIVITY TO THE SOIL, AND CREATE AND REINFORCE
5 THE ECONOMIC BASE. IF YOU CLASSIFY THIS AS A
6 WASTE PRODUCT AND ELIMINATE OUR ABILITY TO
7 CONTINUE USING THIS AS A SOIL AMENDMENT, YOU WILL
8 VERY SERIOUSLY JEOPARDIZE OUR ABILITY TO MEET THE
9 STANDARDS OF AB 939 WITH 60,000 TONS ANNUALLY. IF
10 WE DON'T HAVE SOME BENEFICIAL WAY TO USE THIS
11 PRODUCT AND IT ENDS UP GOING INTO OUR LANDFILL,
12 THAT WILL HAVE JUST A DEVASTATING IMPACT ON OUR
13 COUNTY LANDFILL.

14 SO AGAIN, WE WOULD VERY MUCH
15 APPRECIATE YOUR CONSIDERATION OF NOT PENALIZING A
16 LEGITIMATE, PROVEN OPERATION BECAUSE OF THE SMALL
17 NUMBER OF ABUSERS. WE CERTAINLY FEEL YOU HAVE
18 MANY ADEQUATE WAYS TO DEAL WITH PEOPLE WHO ARE
19 ABUSING THIS PROGRAM. AND, IN FACT, IF YOU
20 CLASSIFY THIS TYPE OF ASH AS A WASTE, YOU MAY,
IN

21 FACT, BE ENCOURAGING THAT KIND OF ACTIVITY. I
22 BELIEVE THEN THEY COULD SET UP LANDFILLS IN
FIELDS

23 AND, BY DOING THE PAPERWORK, LEGITIMATELY USE
IT

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24 IN A WAY THAT WOULD NOT BE BENEFICIAL TO

SOCIETY.

25 SO WE HOPE THAT YOU WILL SERIOUSLY CONSIDER

1 DETERMINING THIS OUTSIDE THE TIER. THANK YOU.

2 MEMBER RELIS: MR. CHAIR, I'D JUST ASK
3 SUPERVISOR SULLIVAN, YOU MADE MENTION OF STUDIES,
4 PERHAPS, I DON'T KNOW, IN SHASTA COUNTY OF THE USE
5 OF ASH. HAVE YOU -- HAS THE COUNTY OR IS OUR
6 STAFF AWARE OF THOSE STUDIES?

7 SUPERVISOR SULLIVAN: THAT I COULDN'T
8 TELL YOU, BUT I DO KNOW THAT UC DAVIS HAS DONE
9 EXTENSIVE PROGRAMS. IN FACT, OUR AG EXTENSION
10 DEPARTMENT WAS INVOLVED IN DEVELOPING SOME OF
11 THESE PROGRAMS. I BELIEVE ALSO IN THE EAST COAST
12 THIS HAS BEEN DONE FOR A NUMBER OF YEARS. I THINK
13 THE STATE OF NEW HAMPSHIRE HAS SOME RESEARCH THAT
14 PROVES THAT IT IS A LEGITIMATE AGRICULTURAL USE.
15 I'M NOT SURE IF YOU'RE TALKING ABOUT STUDIES --

16 MEMBER RELIS: WE HEARD QUESTIONS FROM
17 LEA'S ABOUT THE LACK OF TESTING ON THIS MATERIAL.
18 THAT'S WHAT I'M REFERENCING. AND YOU ARE SAYING
19 THAT IT HAS BEEN WELL TESTED. AND I'M JUST
20 WONDERING WHAT YOUR REFERENCES MIGHT BE.

21 SUPERVISOR SULLIVAN: I BELIEVE THAT
22 THERE ARE MANY UNIVERSITY TESTS THAT DOCUMENT THE
23 BENEFICIAL USE, AND I ALSO THINK THAT OUR COUNTY
24 COULD BE USED AS A TEXTBOOK TEST IN TERMS OF THE
25 PROBLEMS BECAUSE I THINK, YOU KNOW, WE CERTAINLY

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1 HAVE OUR SHARE OF REGULATORY AGENCIES. MANY
2 PEOPLE IN OUR COUNTY THINK THAT THE OVERSIGHT IN
3 TERMS OF ENDANGERED SPECIES AND THOSE KINDS OF
4 THINGS IS, SOME MIGHT SAY, EXCESSIVE. SO I THINK
5 IF THERE WERE ANY KIND OF PROBLEM, IT WOULD SEEM
6 VERY ODD TO ME THAT NOTHING HAS ARISEN IN EIGHT TO
7 TEN YEARS OF USE AS CLOSELY AS WE'RE MONITORING IN
8 SHASTA COUNTY.

9 MEMBER RELIS: JUST ONE FINAL POINT, JUST
10 A POINT OF CLARIFICATION. JUST FOR THE RECORD, IF
11 FOR SOME REASON ASH WERE DETERMINED TO BE WASTE
12 AND WE WERE TO TREAT IT THAT WAY, IT COULD NOT BE
13 JUST LOCATED ON LAND, THEY WOULD HAVE TO GET A
14 SOLID WASTE PERMIT, AND THAT'S A VERY BIG
15 UNDERTAKING. JUST FOR THE RECORD.

16 SUPERVISOR SULLIVAN: TRUST ME. I CAN
17 APPRECIATE THAT. I DIDN'T MEAN TO BE SO FLIP
18 ABOUT THAT, BUT THE POINT IS THAT IN TERMS OF
19 SIMPLY DUMPING IT SOMEPLACE, RATHER THAN USING IT
20 FOR A BENEFICIAL USE, THAT WOULD BE WHAT WOULD
21 HAVE TO HAPPEN, AND THAT WOULD BE WHAT WOULD
22 HAPPEN. AND YOU'RE ABSOLUTELY RIGHT. IT'S NOT
23 EASY TO GET. THANK YOU.

24 CHAIRMAN FRAZEE: THANK YOU. NOW JOHN
25 BUCHANON REPRESENTING WHEELABRATOR PLANT OPERATOR

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1 IN SHASTA COUNTY.

2 MR. BUCHANON: THANK YOU, MR. CHAIR AND
3 MEMBERS OF THE BOARD. I WORK WITH WHEELABRATOR IN
4 SHASTA COUNTY. WE HAVE TWO PLANTS IN SHASTA
5 COUNTY, AS WELL AS WHEELABRATOR OPERATES ONE
6 SOUTHEAST OF SACRAMENTO.

7 I'D LIKE TO START BY THANKING MR.
8 FRAZEE AND MEMBERS OF STAFF FOR COMING UP TO
9 SHASTA COUNTY LAST MONTH AND TOURING THE FARM
10 FIELDS WHERE WE'VE ESSENTIALLY APPLIED 100
PERCENT
11 OF OUR ASH OVER THE LAST 12 MONTHS. AND I THINK
12 THEY ALL SAW FIRSTHAND HOW THE ASH IS HANDLED IN
13 LEGITIMATE FARMING OPERATIONS.

14 SHASTA COUNTY, AS OUR COUNTY
15 SUPERVISOR POINTED OUT, WE HAD SOME GUIDANCE IN
16 THE EARLY DAYS FROM THE WATER BOARD, BUT
17 ESSENTIALLY IT'S BEEN A NOT REGULATED ACTIVITY AS
18 FAR AS FROM THE OVERSIGHT OF THE WASTE BOARD.

OR,

19 YOU KNOW, THE WATER BOARD BASICALLY WILL RESPOND,
20 THE REGIONAL WATER BOARD WILL RESPOND ON
21 COMPLAINTS, BUT THEY HAD GIVEN US GUIDANCE IN THE
22 EARLY DAYS ON STARTING OUR PARTICULAR ASH
PROGRAM.

23 WHEN THE STAFF AND MR. FRAZEE CAME

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24 UP, WHAT THEY SAW WAS A VAST VARIETY OF
25 APPLICATIONS. WHEELABRATOR SHASTA, BEING THE

1 LARGEST BIOMASS PLANT IN THE STATE OF CALIFORNIA,
2 IS ALSO ONE OF THE LARGEST ASH GENERATORS IN THE
3 STATE. WE GENERATE 20,000 TONS A YEAR OF ASH
4 OURSELVES IN OUR SINGLE PLANT. THE TYPES OF FARMS
5 THAT WE TOOK THEM OUT TO RANGED FROM THE LOCAL
6 GARDENER -- THE LOCAL GARDEN MERCHANT WHO SELLS
7 VEGETABLES OUT OF HIS GARAGE AND IN LOCAL MARKETS
8 TO ONE OF THE LARGEST WALNUT OPERATIONS IN THE
9 ENTIRE STATE OF CALIFORNIA, WHO HAS TAKEN NEARLY
10 40,000 TONS OF ASH OVER THE LAST THREE YEARS AND
11 USED IT IN HIS 5,000 ACRES OF WALNUTS, WHICH ARE
12 SOLD AS CUSTOM WALNUTS BOTH IN NORTH AMERICA AND
13 EUROPE.

14 THIS IS A VERY EXTENSIVE OPERATION
15 WHERE LOTS OF EQUIPMENT ARE USED. HE HAS SPENT
16 PROBABLY OF HIS OWN MONEY, I WOULD IMAGINE,
17 SOMEWHERE AROUND A QUARTER MILLION DOLLARS IN
18 APPLYING THIS ASH TO HIS ORCHARDS. AND I
19 GUARANTEE YOU THAT THIS PERSON IS NOT DOING IT
20 AS
21 A FAVOR TO US.

22 MOST PEOPLE WOULDN'T SPEND A
23 QUARTER
24 MILLION DOLLARS TO HELP US OUT. WE PAY HIM
25 NOTHING TO TAKE OUR ASH. WE HAUL IT TO HIM.
26 HE

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24 INCORPORATES IT BECAUSE HE HAS SEEN BENEFICIAL
USE
25 FROM IT. HE'S A VERY SHARP INDIVIDUAL.
OBVIOUSLY

1 WITH AN OPERATION LIKE THIS, HE'S DONE TISSUE
2 CULTURES, HE'S DONE A LOT OF HIS OWN TESTING.

3 THE QUESTION WAS RAISED ABOUT
4 TESTING. UC DAVIS, DR. ROLAND MYERS STAFF, IN
5 FACT, ON THE FIELD TRIP UP TO SHASTA COUNTY, WHEN
6 ONE OF OUR LARGEST PROPERTY OWNERS IN THE COUNTY,
7 WHO ALSO IS ONE OF THE FIRST PEOPLE THAT HAD COME
8 TO US TO USE ASH, HE WAS ADVISED BY DR. ROLAND
9 MYER THAT YOU CAN PUT UP TO 90 TONS AN ACRE OF
10 THIS STUFF ON LAND UP IN SHASTA COUNTY BECAUSE OF
11 YOUR LOW PH AND THERE WOULDN'T BE ANY PROBLEM AND
12 YOU WILL SEE BENEFICIAL USE.

13 THE TEST CONDUCTED BY UC DAVIS HAS
14 SEEN IMPROVED PLANT GROWTH IN EUCALYPTUS ORCHARDS,
15 IN ROW CROPS, AND IN DEPTH CROPS UP TO 200 TONS
16 PER ACRE. OUR NORMAL APPLICATION IS ABOUT 20 TONS
17 PER ACRE ON THESE FARM FIELDS. BUT THERE HAS BEEN
18 EIGHT TO TEN YEARS OF STUDY AT THE UNIVERSITY OF
19 CALIFORNIA DAVIS LOOKING AT BENEFICIAL USE OF ASH.
20 AND I THINK THIS IS A REALLY KEY THING.

21 ONE OF THE THINGS THAT WAS POINTED
22 OUT EARLIER BY THE LEA, AND I THINK IS REAL
23 IMPORTANT TO WHAT WE'RE TALKING ABOUT TODAY, TO
24 TRY AND DECIDE WHERE THIS SHOULD BE PLACED.
25 OBVIOUSLY NONBENEFICIAL USE OF ASH, WE DON'T

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1 SUPPORT, WE DON'T ENDORSE, AND WE DON'T CONDONE
2 IT. IF THERE'S SOMEBODY OUT THERE DOING A SHAM
3 DISPOSAL, WE THINK THAT THEY NEED TO BE REGULATED
4 BY THE BOARD, AND THE BOARD SHOULD HAVE SOME SORT
5 OF REGULATORY OVERSIGHT OVER THEM, BUT I THINK THE
6 ISSUE COMES DOWN TO WE HAVE TAKEN SOME ACTIVITIES
7 WHICH WE'VE SAID THAT ASH IS CLEARLY DEMONSTRATED
8 THAT IT'S BENEFICIAL. AND BECAUSE OF THAT, IT IS
9 OUTSIDE OF THE JURISDICTION OF THE BOARD, AND THE
10 BOARD SHOULD NOT GET INTO IT.

11 THINGS SUCH AS ROAD BASE, WHICH WE
12 ALSO DO WITH OUR BOTTOM ASH. WE GENERATE A FEW
13 THOUSAND TONS A YEAR OF BOTTOM ASH, WHICH HAS BEEN
14 USED AS ROAD BASE IN SHASTA COUNTY BY A LOCAL
15 DEVELOPER. BUT THINGS LIKE FEED LOT STABILI-
16 ZATION, COMPOST FILLER, MANURE STABILIZATION,
17 THESE THINGS HAVE BEEN DETERMINED TO BE BENEFI-
18 CIAL. AND HENCE, SINCE THEY'RE BENEFICIAL, THE
19 BOARD HAS MADE THE DETERMINATION THAT IT SHOULDN'T
20 FALL UNDER THEIR JURISDICTION BECAUSE IT'S BEEN
21 DOCUMENTED BENEFICIAL USE FOR THIS.

22 NOW, ALL OF THESE APPLICATIONS HAVE
23 THE SAME POTENTIAL TO BE ABUSED. THERE IS NO
24 DOUBT THAT IN SOCIETY THERE'S GOING TO BE HONEST
25 PEOPLE AND DISHONEST ONES. WE CAN'T CHANGE THAT.

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1 THEY'RE IN ALL BUSINESSES, THEY'RE IN PUBLIC,
2 THEY'RE EVEN IN GOVERNMENT. I THINK WE HAVE 95
3 PERCENT OF THE APPLICATIONS ARE PROBABLY DONE IN A
4 VERY RESPONSIBLE MANNER IN THIS STATE AND WE HAVE
5 A SMALL PERCENTAGE THAT ARE ABUSED. AND WHAT WE
6 WOULD REALLY RECOMMEND IS THAT WE FIND SOME WAY OF
7 ENCOURAGING THE PROPER USE OF ASH BECAUSE IT
8 DEFINITELY HAS BENEFICIAL USE.

9 SOME OF THE STATES LIKE MAINE HAVE
10 ACTUALLY PUT A DOLLAR PER TON NUTRIENT VALUE ON
11 ASH. ON THE WEST COAST WE'RE A LITTLE YOUNGER IN
12 THIS INDUSTRY. WE FINALLY REACHED THE POINT WITH
13 OUR PARTICULAR PLANT WHERE NEXT YEAR WE HAVE MORE
14 FARMERS ASKING FOR ASH THAN WE CAN PHYSICALLY
15 SUPPLY. WE HOPE THAT AT SOME POINT THAT'S GOING
16 TO MEAN THAT THEY'RE GOING TO START PAYING FOR OR
17 SUBSIDIZING PART OF THE TRANSPORTATION. AT THIS
18 POINT WE'VE NEVER PAID A FARMER TO TAKE ASH. WE
19 DON'T PLAN TO EVER PAY THEM. WE'VE MADE A
20 CONSCIOUS DECISION TO SEND IT TO A LANDFILL BEFORE
21 WE PAY SOMEBODY BECAUSE WE FEEL IF WE'RE PAYING
22 SOMEBODY, YOU ARE RISKING THAT CHANCE OF, YOU
23 KNOW, SOMEBODY WANTING TO TRY AND DO SOMETHING FOR
24 GAIN.

25 BUT THERE CLEARLY HAVE BEEN

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1 DEMONSTRATED BENEFICIAL USE TO LAND APPLICATION OF
2 ASH. I'M SURE THERE ARE JUST AS EASILY CLEARLY
3 DEMONSTRATED ABUSES. BUT IF SOMETHING IS
4 BENEFICIAL, WE'VE ALREADY SAID THAT THERE ARE
5 BENEFICIAL ACTIVITIES EXCLUDED FROM THE BOARD'S
6 REGULATIONS. AND THE QUESTION SEEMS TO BE IS THIS
7 OR IS THIS NOT BENEFICIAL. I WOULD HOPE THAT UC
8 DAVIS WOULDN'T STUDY SOMETHING FOR TEN YEARS
9 WITHOUT SOME INITIAL INDICATION THAT THERE'S
10 BENEFICIAL APPLICATION OF WOOD ASH. TEN YEARS OF
11 STUDY SEEMS LIKE AN AWFUL LONG TIME FROM A
12 UNIVERSITY.

13 AND, YOU KNOW, THERE'S A LOT OF
14 STUDIES, LIKE I SAID, ELSEWHERE IN THE COUNTRY.
15 WE HOPE THAT THE BOARD WILL SERIOUSLY CONSIDER
16 WHAT WILL HAPPEN IF WE PUT THIS INSIDE THE TIERS
17 AND GIVE IT THE STIGMA OF A WASTE.

18 ONE OF THE THINGS WE DID ON OUR
19 FIELD TRIP. LAST TIME I TESTIFIED HERE, I SAID IN
20 MY OPINION IF WE CALLED THIS A WASTE, WE WOULD
21 DISCOURAGE LEGITIMATE LANDOWNERS FROM USING IT.
22 AND I WAS ASKED BY THE BOARD HAD WE GONE OUT AND
23 ASKED THE FARMERS. AT THAT TIME I HADN'T. I WAS
24 GIVING MY OPINION HOW I WOULD VIEW IT WHEN I'VE
25 USED THE ASH ON MY OWN PROPERTY. I HAVE 12 ACRES

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1 IN SHASTA COUNTY. I'VE APPLIED ASH TO IMPROVE THE
2 SOIL CONDITIONS FOR PH. AND I KNOW HOW I WOULD
3 FEEL HAVING USED THE ASH.

4 SO ON OUR FIELD TRIP WE DELIBERATELY
5 ASKED EACH OF THE FARMERS. IT WAS THE FIRST TIME
6 I HAD TALKED TO MANY OF THEM IN A FEW YEARS. AND
7 WE ASKED THEM IN FRONT OF THE BOARD, "WOULD YOU
8 TAKE THIS IF THIS IS CLASSIFIED AS A WASTE?"
9 EVERY SINGLE PERSON FROM THE LARGEST WALNUT
10 PACKAGER IN THE STATE DOWN TO THE GUY THAT SELLS
11 MONSTER JALAPENOS OUT OF HIS GARAGE MADE THE SAME
12 STATEMENT. NO. THEY'RE NOT GOING TO HAVE
13 SOMEBODY PERCEIVE THEIR FARM, THEIR PROPERTY THAT
14 THEY MAY SELL SOMEDAY, OR THEIR BUSINESS WHERE
15 THEY HAVE TO OBTAIN BANK LOANS FOR A MULTIMILLION
16 DOLLAR OPERATION AS A WASTE DISPOSAL SITE.

17 SO I THINK IT'S A REAL SERIOUS
18 QUESTION. IT'S ONE OF THE ONES THAT ELLIOT
19 POINTED OUT IN HIS BRIEF, WHICH I THINK IS AN
20 IMPORTANT ONE TO DISCUSS HERE BECAUSE THIS WILL
21 DESTROY THE BENEFICIAL USE. I MEAN AT LEAST I
22 KNOW FOR OUR PLANT WE VIEW THAT IF THIS IS LABELED
23 AS A WASTE, THE NEXT DAY WE'LL BE GOING BACK TO
24 THE LANDFILL WITH 20,000 TONS OF ASH A YEAR. OUR
25 PEOPLE HAVE ALREADY TOLD US NO. SO IT'S CLEAR-CUT

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1 FOR US. WE'RE GOING TO STAY WITHIN THE LAW.
2 WE'RE NOT GOING TO GO TO SOME SHAM DISPOSAL. SO
3 WE'LL SPEND ONE-HALF MILLION DOLLARS A YEAR IN
4 DISPOSING OF THIS MATERIAL. THANK YOU VERY MUCH.

5 CHAIRMAN FRAZEE: QUESTIONS?

6 IF NOT, BOB ALLEN, BURNEY FOREST
7 PRODUCTS.

8 MR. ALLEN: I HOPE YOU WILL BEAR WITH ME.
9 I'LL BE A LITTLE NERVOUS. THIS IS OUT OF MY
10 NORMAL REALM OF ACTIVITIES. MY NAME IS BOB ALLEN.
11 I'M THE FUEL SUPPLY MANAGER FOR A WOOD BURNING
12 POWER PLANT. MOST OF OUR FUEL IS -- WELL, ALL OF
13 IT, AS A MATTER OF FACT, IS DERIVED FROM FOREST
14 THINNINGS OR SAWMILL ACTIVITIES. SO IT'S ALL COME
15 FROM CONIFER TREES ESSENTIALLY.

16 WHAT A CONIFER TREE IS IS MADE UP OF
17 THE NUTRIENTS THAT ARE IN OUR SOIL. AND SO WE'RE
18 NOT ADDING ANYTHING INTO THIS ASH STREAM THAT, I
19 BELIEVE, IS HARMFUL TO ANY LIVING CREATURE FOR
20 THAT MATTER. OUR ASH IS REGULATED BY FOOD AND
21 AGRICULTURE. WE DO HAVE AN AGRICULTURAL LABEL.

22 WE ARE VISITED BY AGRICULTURAL
23 DEPARTMENT ON AN UNANNOUNCED BASIS. THEIR
24 REPRESENTATIVE TAKES A SAMPLE OF OUR ASH, RUNS
THE
25 TESTS ON IT TO SEE IF IT DOES CONTAIN THE

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ELEMENTS

1 THAT WE CLAIM IT DOES UNDER OUR LICENSE WITH THEM
2 AS AN AGRICULTURAL PRODUCT.

3 STATE WATER QUALITY CONTROL BOARD,
4 THE LOCAL FOLKS, WE HAVE WASTE DISCHARGE PERMITS
5 FOR OUR FACILITY. ESSENTIALLY WE ARE A ZERO
6 DISCHARGE FACILITY. WE EVEN COLLECT THE RAINWATER
7 AND RECYCLE IT ON OUR PLANT SITE.

8 IF WE WERE ABUSING ASH AND NOT DOING
9 AGRONOMIC RATES, THE LOCAL RANCHERS AND FARMERS
10 CERTAINLY WOULDN'T BE USING IT. WE'VE DIVERTED
11 OUR ASH FROM LANDFILLS FOR THE LAST EIGHT YEARS.
12 IF THE ASH FROM OUR PLANT WAS PUT BACK INTO THE
13 SOLID WASTESTREAM AND GOING TO THE LANDFILL, THE
14 BASE QUANTITIES IN SHASTA COUNTY -- I DON'T KNOW
15 WHAT THESE NUMBERS ARE -- BUT I BELIEVE OUR PLANT
16 WAS NOT INCLUDED IN THAT DIVERSION BASELINE. SO
17 SHASTA COUNTY COULD WELL BE ABOVE THE REQUIREMENTS
18 THAT -- ON 939.

19 WE EARLY ON ABOUT, I GUESS ABOUT
20 EIGHT YEARS AGO, FUNDED A STUDY WITH OUR LOCAL AG
21 EXTENSION AGENT IN EASTERN SHASTA COUNTY, AND ALSO
22 HAD DR. ROLLY MYERS FROM DAVIS UP TO ADDRESS THE
23 CONCERNS OF APPLYING ASH TO THE GROUND WITH THE
24 LOCAL RANCHERS. AND WHAT WE DID AT THAT
25 PARTICULAR SITE IS WE APPLIED ASH AT A 40-PERCENT

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1 MOISTURE CONTENT, SO 40 PERCENT OF THE WEIGHT WAS
2 WATER. BUT AT THAT MOISTURE CONTENT, WE APPLIED
3 64 TONS TO THE ACRE. IT WAS DISKED THEN WITH A
4 30-INCH DISK. THE YIELD OF CROP PER ACRE WAS A
5 MULTIPLE OF FOUR TIMES GREATER THAN IT WAS IN THE
6 ADJACENT LAND. WE JUST DID A ONE-ACRE TEST PLOT
7 SQUARE OUT IN THE MIDDLE OF A FIELD.

8 WE BELIEVE THAT THE BENEFICIAL USES
9 OF ASH MUCH OUTWEIGH TAKING IT BACK TO THE
10 LANDFILL. IF WE ARE CLASSIFIED AS A WASTE, I CAN
11 SEE WE'RE GOING BACK INTO A LANDFILL. IF THERE
12 ARE A FEW INDIVIDUALS WHO ARE ABUSING AGRONOMIC
13 USES OF ASH, I BELIEVE THERE SHOULD AND ARE
14 EXISTING REGULATIONS WHERE THAT CAN BE DEALT WITH
15 IN APPROPRIATE MANNERS. I DON'T THINK, TO USE A
16 REAL PLAIN METAPHOR, YOU SHOULD THROW OUT THE
BABY

17 WITH THE BATH WATER. DON'T PENALIZE THE
MAJORITY

18 FOR A FEW BAD ACTORS. THANK YOU.

19 CHAIRMAN FRAZEE: THANK YOU. NOW KATHY
20 CURRIE REPRESENTING CALIFORNIA BIOMASS ENERGY
21 ALLIANCE.

22 MS. CURRIE: KATHY CURRIE, REPRESENTING
23 THE BIOMASS ENERGY ALLIANCE. I WANT TO MAKE
JUST

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24 THREE QUICK POINTS. I THINK MOST OF THEM HAVE
25 BEEN MADE IN SOME OR ANOTHER ALREADY TODAY.

1 TOUCHING ON JURISDICTION, THE SECOND -- THE LEA
2 PERCEPTION THAT I'VE PICKED UP FROM THIS MEETING
3 TODAY AND THEN THE QUESTION OF OVERSIGHT AND
4 BALANCING.

5 FIRST, IN TERMS OF JURISDICTION, OUR
6 POSITION IS AND ALWAYS HAS BEEN THAT THIS ASH IS
7 NOT A WASTE IF IT'S BENEFICIALLY USED. IT'S THAT
8 IF CLAUSE THAT REALLY IS THE OPERATIVE PART OF
9 THAT STATEMENT. SO WE WOULD CONCUR THAT THERE IS
10 SOME LEVEL OF OVERSIGHT THAT'S NECESSARY IN ORDER
11 TO DETERMINE AND MAKE A DISTINCTION BETWEEN
12 DISPOSAL-TYPE OPERATIONS AND ACTUAL BENEFICIAL
13 USE.

14 THE SECOND POINT I'D LIKE TO MAKE
15 HAD TO DEAL WITH LEA PERCEPTION. I THINK BY
16 VIRTUE OF HOW THIS TRANSPIRED, PART OF THE
17 REACTION THAT YOU'RE HEARING FROM THE LEA'S
TODAY

18 SPRINGS FROM A FEAR THAT YOU WOULD NOT REGULATE
AT
19 ALL, NOT EXERCISE ANY OVERSIGHT OVER THIS
20 ACTIVITY.

21 MY SENSE OF WHERE YOU ARE GOING IS
22 THAT YOU WILL, IN FACT, EXERCISE SOME OVERSIGHT.
23 THEN THE QUESTION IS HOW MUCH OVERSIGHT, WHICH
24 LEADS TO MY THIRD POINT. AND THAT IS THE NEXT

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25 STAGE IN THIS PROCESS IS GOING TO BE BALANCING
THE

1 INTERESTS THAT YOU'VE HEARD.

2 THERE'S A VERY REAL AND LEGITIMATE
3 FEAR THAT IN PUSHING THIS INTO A WASTE
4 CLASSIFICATION, YOU ARE GOING TO SEVERELY LIMIT
5 OUR POTENTIAL TO RECYCLE THIS MATERIAL. YOU'RE
6 BALANCING THAT AGAINST AN LEA PERCEPTION THAT
THEY

7 NEED SOME REGULATORY HANDLE TO MAKE SURE THAT
THIS

8 ISN'T DISPOSAL. WE BELIEVE YOU CAN ACHIEVE THAT
9 IN THE EXCLUDED TIER, THAT YOU CAN ADOPT
10 SELF-IMPLEMENTING STANDARDS WHICH IS A COMMON
11 PRACTICE. THAT'S HOW DTSC REGULATES HAZARDOUS
12 WASTES, WHICH IS BY FAR A MORE RISKY ENDEAVOR
THAN

13 AGRONOMIC PRACTICES.

14 WE THINK YOU CAN ACHIEVE THAT
15 OBJECTIVE THROUGH SELF-IMPLEMENTING TIERS IN THE
16 EXCLUDED TIER. WE'RE ATTEMPTING TO WORK WITH
17 STAFF TO DEVELOP LANGUAGE THAT WILL BE CLEAR AND
18 SIMPLE AND EASILY IMPLEMENTED BY THE LEA'S TO
19 ENSURE THAT THESE OPERATIONS ARE NOT, IN FACT,
20 SHAM DISPOSAL. THANK YOU VERY MUCH.

21 CHAIRMAN FRAZEE: THANK YOU. CHUCK
WHITE

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22 OF WMX.

23 MR. WHITE: THANK YOU, MR. CHAIRMAN,

24 MEMBERS OF THE COMMITTEE. IT IS CHUCK WHITE WITH

25 WMX.

1 I DO WANT TO START OUT BY
2 REITERATING THAT STAFF HAS DONE AN EXCELLENT JOB
3 IN PUTTING TOGETHER THE AUTHORITY ISSUE PAPER. I
4 DON'T THINK THERE'S ANY QUESTION THAT ASH IS
5 INCLUDED AS ONE OF THE TERMS IN THE DEFINITION OF
6 SOLID WASTE. IN FACT, ASH MIGHT BE MANAGED IN
7 MANY CIRCUMSTANCES AS A SOLID WASTE. HOWEVER,
8 EQUALLY TRUE, THERE'S NO QUESTION IN OUR MINDS
9 CERTAINLY THAT ASH CAN, IN FACT, IS BEING USED
10 BENEFICIALLY AS A COMMERCIAL PRODUCT WITHIN THE
11 STANDARDS FOR USE IN THE MARKETPLACE.

12 THE CENTRAL ISSUE BEFORE THIS
13 COMMITTEE AND THE BOARD IS HOW DO YOU DEFINE AND
14 SEPARATE THESE TWO TYPES OF ACTIVITIES. ON ONE
15 HAND, YOU HAVE SOLID WASTE MANAGEMENT AND
16 DISPOSAL. ON THE OTHER HAND, YOU HAVE BENEFICIAL
17 USE.

18 WITH RESPECT TO THE SOLID WASTE
19 DISPOSAL, WE WANT THIS BOARD AND THE LEA'S TO
20 EXERCISE THEIR FULL AND COMPLETE AUTHORITY OVER
21 THE MANAGEMENT AND HANDLING OF ASH AS A SOLID
22 WASTE. WE WANT YOU TO HAVE CLEAR AND
UNAMBIGUOUS

23 AUTHORITY TO REGULATE, TO CONTROL THIS ACTIVITY,
24 AND, INDEED, IT'S OUR INTENT TO ENSURE THAT YOU
25 HAVE THIS FULL AUTHORITY; AND, HOPEFULLY, THE

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1 REGULATIONS, AS THEY BECOME DEVELOPED, WILL MAKE
2 SURE THAT THIS IS CLEAR, THAT WHEN ASH IS BEING
3 HANDLED AS A SOLID WASTE, PARTICULARLY IF IT'S
4 BEING DISPOSED OF AS A SOLID WASTE, YOU HAVE CLEAR
5 AND UNAMBIGUOUS AUTHORITY TO MANAGE AND REGULATE
6 THAT ACTIVITY.

7 HOWEVER, IF AN ASH PRODUCT IS USED
8 BENEFICIALLY, WHETHER IT'S FOR SNOW AND ICE
9 CONTROL, WHETHER IT'S FOR ROADBED MATERIAL, OR
10 WHETHER IT'S USED AS AN AGRONOMIC PRODUCT, THIS
11 BOARD SHOULD NOT HAVE THE AUTHORITY TO REGULATE
12 THAT AS A SOLID WASTE. IT SHOULD BE EXCLUDED FROM
13 REGULATION. JUST AS IS TRUE WITH SNOW AND ICE
14 REMOVAL, ROADBED MATERIALS, YOU CAN, IN FACT,
15 MISMANAGE IT. IF YOU -- I CAN IMAGINE PUTTING IT
16 DOWN FOR SNOW AND ICE CONTROL A QUARTER OF AN
17 INCH. IF YOU WERE TO PUT DOWN 2 FEET FOR SNOW AND
18 ICE CONTROL, ONE WOULD BEGIN TO WONDER ARE YOU
19 REALLY USING IT FOR SNOW AND ICE CONTROL OR ARE
20 YOU USING IT FOR SOME OTHER PURPOSE.

21 THIS IS TRUE ACROSS THE BOARD. THE
22 QUESTION IS WE NEED TO TRY TO CLEARLY DEFINE WHICH
23 SIDE OF THE FENCE YOU'RE ON. THE BOARD HAS
24 ADDRESSED THIS IN A LOT OF WAYS IN THE PAST
25 ACTUALLY, FOR EXAMPLE, PAPER. IF YOU ARE

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1 RECEIVING SOURCE SEPARATED RECYCLABLES THAT PASS
2 THE TWO-PART TEST, YOU HAVE ALREADY SAID THAT THIS
3 MATERIAL IS NOT A SOLID WASTE. YOU WANT TO HAVE
4 IT EXCLUDED. YOU ADOPTED A POLICY IN OCTOBER '95
5 THAT BASICALLY WAS IT WOULD BE OUTSIDE OF YOUR
6 PURVIEW.

7 WHAT IF YOU WERE TO STOCKPILE PAPER
8 IN SUCH A WAY THAT IT BECOMES MISMANAGED? IF
9 YOU -- YOU CANNOT PRECLUDE FOREVER THAT SOMEONE
10 MAY NOT PUT A PILE OF PAPER TOGETHER AND THEY
11 START BLOWING ALL OVER THE COMMUNITY, CREATING A
12 NUISANCE. IS THE WAY TO GO BACK IN AND MANAGE
13 THAT AS A SOLID WASTE OR USE YOUR NUISANCE
14 AUTHORITY TO PROPERLY CONTROL THAT PAPER, THAT
15 INCLUDED PAPER ACTIVITY?

16 THE THING I WANT TO REMIND YOU OF IS
17 THAT AB 939, AND I'M SURE YOU'RE ALL AWARE OF IT,
18 SHOULD BE VIEWED AS A BACKDROP AGAINST ALL OF
19 THESE DISCUSSIONS. WHILE THE PUBLIC RESOURCES
20 CODE DOES INCLUDE ASH IN THE DEFINITION OF SOLID
21 WASTE, INCLUDES MANY OTHER MATERIALS THAT ARE ALSO
22 INCLUDED IN THE DEFINITION OF SOLID WASTE. AND
23 THE ONLY WAY THAT AB 939 WORKS IS IF YOU REACH
24 INTO THOSE MATERIALS AND PULL THEM OUT AND NO
25 LONGER TREAT THEM AS SOLID WASTE, BUT RECLAIM THEM

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1 AND REUSE THEM. IN FACT, THE DEFINITION OF
2 RECYCLING THAT ELLIOT MENTIONED CLEARLY STATES THE
3 MATERIALS THAT WOULD HAVE OTHERWISE BECOME A SOLID
4 WASTE, THEY'RE RECYCLED AND REUSED TO ENTER THE
5 ECONOMIC MAINSTREAM OF PRODUCT.

6 PEOPLE SEEM TO INDICATE THAT BECAUSE
7 ASH APPEARS IN THE DEFINITION OF SOLID WASTE,
8 THEY'RE REALLY ONLY LOOKING AT THAT DEFINITION AND
9 NOT LOOKING AT HOW IT FITS IN, I BELIEVE, INTO THE
10 REST OF THE DEFINITIONS THAT ARE OPERATIVE WITHIN
11 THE PUBLIC RESOURCES CODE.

12 THE CHALLENGE THAT FACES THIS BOARD
13 IS TO CREATE THIS BRIGHT LINE OR CURTAIN, IF YOU
14 WILL, WHICH CLEARLY SAYS ON ONE SIDE YOU'VE GOT
15 MATERIAL THAT'S BEING MANAGED AS SOLID WASTE,
16 WHETHER IT'S DISPOSAL OR STORAGE OR MANAGEMENT,
17 YOU REGULATE THAT ACTIVITY. ON THE OTHER SIDE IS
18 MATERIAL THAT'S BENEFICIAL USE. YOU DON'T
19 REGULATE THAT ACTIVITY, BUT YOU DO REGULATE THAT
20 BOUNDARY LINE. YOU BASICALLY CREATE DEFINITIONAL
21 PARAMETERS, EITHER BROADLY DEFINED OR

DEFINITIONAL

22 PARAMETERS OR PERHAPS MORE NARROWLY SPECIFICALLY
23 DEFINED. BUT AGAIN, ON ONE SIDE IT'S SOLID
WASTE;

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24 ON ONE SIDE IT'S A RECLAIMED PRODUCT BEING USED.
25 WHAT ARE SOME OF THESE CRITERIA
THAT

1 SHOULD BE USED? WE'VE BEEN WORKING TOGETHER WITH
2 OTHER MEMBERS OF THE ASH INDUSTRY TO TRY TO COME
3 UP WITH A CRITERIA. WE HOPE THAT WE WILL BE IN A
4 POSITION TO IN THE VERY NEXT FEW DAYS TO COME AND
5 GIVE OUR SENSE OF HOW THIS BRIGHT LINE CRITERIA
6 SHOULD BE DRAWN. THERE'S A NUMBER OF THINGS THAT
7 CAN BE USED TO EITHER GENERALLY OR SPECIFICALLY,
8 SUCH AS WHETHER OR NOT YOU HAVE AN AGRICULTURAL
9 PROFESSIONAL INVOLVED AND DETERMINES WHETHER OR
10 NOT THIS STUFF IS BEING USED BENEFICIALLY. HAVE
11 WDR'S BEEN ISSUED? IS THE MATERIAL APPLIED
12 APPROPRIATELY? DOES IT MEET THE STANDARDS FOR USE
13 IN THE MARKETPLACE? WHETHER THAT'S A PH LEVEL OR
14 A METAL CONTROL LEVEL.

15 MAYBE THERE SHOULD BE SOME NOTICE.
16 IF SOMEONE IS CLAIMING THAT THEY ARE SEEKING AN
17 EXCLUSION, THAT THERE'S A NOTICE THAT YOU'RE
18 CLAIMING THIS EXCLUSION FROM REGULATION AS A SOLID
19 WASTE, AND SO IT'S ALL IN FRONT, FULL DISCLOSURE,
20 NOTHING IS BEING HIDDEN, AND YOU'VE REGISTERED
21 YOUR PRODUCT OR FERTILIZER WITH THE DEPARTMENT OF
22 FOOD AND AGRICULTURE AS A FERTILIZER, AS A SOIL
23 AMENDMENT.

24 THESE KIND OF CRITERIA, WE
THINK,

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25 CAN BE USED TO, WE BELIEVE, CLEARLY DELINEATE

1 THOSE SITUATIONS THAT ARE LAND APPLICATION AS
2 BENEFICIAL USE VERSUS LAND DISPOSAL AS A SOLID
3 WASTE. WE WOULD ASK THE BOARD TODAY, THE
4 COMMITTEE TODAY AND THE BOARD TO PROVIDE DIRECTION
5 THAT THIS IS A LEGITIMATE CONCEPT, THAT THERE
6 IS -- IN FACT, ASH CAN FALL IN BOTH CAMPS, AND THE
7 BOARD SHOULD REGULATE THAT PORTION OF ASH THAT IS
8 BEING MANAGED AS A SOLID WASTE; BUT ON THE OTHER
9 HAND, THAT MATERIAL THAT CLEARLY MEETS THIS
10 CRITERIA, WHICH WE HOPE TO DEVELOP IN CONCERT WITH
11 THE STAFF AND OTHER INTERESTED PARTIES, THAT ONCE
12 YOU PASS THROUGH THAT CRITERIA, YOU ARE EXCLUDED
13 AND YOU ARE BENEFICIALLY USED, AND IT'S NOT A
14 SOLID WASTE.

15 SO THE BOARD, AGAIN, REGULATES
16 MATERIALS ON ONE SIDE AND REGULATES THAT BORDER,
17 IF YOU WILL, BUT ONCE THROUGH THAT BORDER, THERE
18 WOULD BE LIMITED DIRECT OVERVIEW AND OVERSIGHT.
19 THAT'S ALL I HAVE TO SAY THIS MORNING, AND I
20 APPRECIATE YOUR TIME. THANK YOU VERY MUCH.

21 CHAIRMAN FRAZEE: THANK YOU. NOW,
22 PAUL -- I'M SORRY I CAN'T READ -- DEROSHER.

23 MR. DEROSHER: MY NAME IS PAUL DEROSHER
24 WITH THERMO ECOTECH. WE HAVE THREE
25 BIOMASS-TO-ENERGY FACILITIES IN CALIFORNIA,

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1 PRIMARILY IN THE CENTRAL VALLEY; ONE IN WOODLAND,
2 MENDOTA, AND DELANO.

3 JUST WANTED TO MAKE A COUPLE POINTS.
4 ONE, THAT WE HAVE A CONTINUAL TESTING PROGRAM FOR
5 OUR ASH, BOTH FROM THE FEEDSTOCK SIDE AND ALSO
6 FROM OUR REGULAR, AS WE DEVELOP OUR ASH, ON A
7 WEEKLY BASIS, WE DO ONGOING ANALYSIS. WE ALSO
8 HAVE A RECORDKEEPING SYSTEM WITHIN WHERE WE KNOW
9 EXACTLY WHERE OUR ASH IS BEING APPLIED AND WHAT
10 USE.

11 IT SEEMS -- A QUESTION I HAVE IN MY
12 MIND, IT SEEMS 68 PERCENT OF THE FEEDSTOCK THAT
13 WE
14 USE IN OUR BIOMASS FACILITIES IS COMING FROM
15 AGRICULTURE IN THE FIRST PLACE, PRIMARILY
16 PRUNINGS

17 AND ORCHARD REMOVALS THAT WOULD NORMALLY BE OPEN
18 FIELD BURNED. AND I GUESS I DON'T HAVE TO TELL
19 YOU WHERE THAT ASH GOES. IT GOES OPEN FIELD
20 BURN,

21 IT STAYS ON THE GROUND AND IT'S APPLIED TO THE
22 GROUND.

23 WE'RE JUST BASICALLY GETTING
24 ANOTHER

25 VALUE OUT OF IT BY PRODUCING ENERGY AND THEN

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DOING

22 A GROUND APPLICATION. OUR FACILITIES, AS YOU

MOVE

23 FROM THE UPPER PART OF THE STATE TO THE NORTHERN

24 PART OF THE STATE TO THE SOUTHERN PART OF THE

25 STATE, THERE'S NOT AS GREAT A NEED FOR PH

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1 BAKER, REPRESENTING COGENERATION ASH COALITION.

2 MS. BAKER: THANK YOU, MR. CHAIRMAN.

3 CAROLYN BAKER REPRESENTING THE COGENERATION ASH
4 COALITION. TO SAVE TIME AND BE BRIEF, LET ME JUST
5 START BY SAYING THAT I WOULD LIKE TO REITERATE
6 THAT THE COGENERATION ASH COALITION FULLY SUPPORTS
7 THE POSITIONS AS EXPRESSED BY MR. WHITE AND MS.
8 CURRIE, AND, IN FACT, AS MR. WHITE MENTIONED, WE
9 ARE DILIGENTLY WORKING TOGETHER TO DEVELOP THE
10 BRIGHT LINE TEST THAT WE HOPE WILL MAKE THIS A
11 MUCH MORE SIMPLE AND CLEAN PROCESS BOTH FOR LEA'S
12 AND INDUSTRY.

13 HOWEVER, THERE ARE A COUPLE OF
14 POINTS I'D LIKE TO ADDRESS THAT WERE RAISED BY MR.
15 PADILLA SPECIFIC TO SAN JOAQUIN COUNTY. FIRST,
16 REGARDING THE FULL SOLID WASTE FACILITIES PERMIT
17 THAT IS REQUIRED IN THAT COUNTY, THE STIGMA OF ASH
18 AS A WASTE HAS BEEN THE DETERRENT AND HAS BEEN THE
19 REASON THAT WE HAVE OPTED TO NOT EVEN PURSUE A
20 PERMIT IN THAT COUNTY AND TO TAKE OUR ASH TO OTHER
21 COUNTIES, LIKE STANISLAUS COUNTY, FOR EXAMPLE, FOR
22 LAND APPLICATION.

23 THAT STIGMA IS REAL. FARMERS DO NOT
24 WANT TO TOUCH A MATERIAL THAT'S BEEN CLASSIFIED AS
25 A WASTE. SO I DID WANT TO CLARIFY THAT, EVEN

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1 THOUGH THERE IS NO LOCAL ORDINANCE IN THAT COUNTY,
2 THE STIGMA ITSELF IS ENOUGH TO PROHIBIT THE
3 BENEFICIAL USE OF THE MATERIAL.

4 SECOND, YOU YOURSELF, MR. CHAIRMAN,
5 MENTIONED PACKAGING OF ASH AND LABELING AS
6 SOMETHING ELSE, WHICH IF LABELED PROPERLY PER
7 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE'S
8 STANDARDS AND REGULATIONS, CAN BE APPLIED TO LAND
9 WITHOUT SUCH A PERMIT. AND, IN FACT, OUR ASH IS
10 PACKAGED AND REGISTERED WITH CDFA AS A FERTILIZING
11 MATERIAL, BUT YET WE HAVE CHOSEN TO NOT USE IT IN
12 SAN JOAQUIN COUNTY JUST SIMPLY BECAUSE OF THE
13 DIFFICULTIES THAT WE'VE EXPERIENCED THERE.
14 HOWEVER, WE BELIEVE THAT THE OVERSIGHT EXERCISE BY
15 CDFA AND THE COUNTY AGRICULTURAL COMMISSIONERS
16 DOES SUFFICE FOR THE USE OF FERTILIZING MATERIALS,
17 AND WE WOULD JUST LIKE TO MAKE SURE THAT SUCH
18 MATERIALS ARE TREATED CONSISTENTLY. THANK YOU.

19 CHAIRMAN FRAZEE: THAT'S ALL OF THE
20 REQUESTS TO SPEAK THAT WE HAVE. THE ITEM IS
21 BEFORE THE COMMITTEE NOW, AND LET ME JUST MAKE
22 SOME SUGGESTIONS.

23 I -- FIRST OF ALL, GOING BACK TO MY
24 ORIGINAL ADMONITION, THAT WE'RE NOT HERE TO
25 ESTABLISH THE REGULATIONS TODAY OR TO PICK OVER

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1 THE MATERIAL, IF HELD OUT FOR BENEFICIAL USE,
2 WOULD BE REQUIRED TO BE REGISTERED AS OTHER
3 MATERIALS ARE WITH FOOD AND AG.

4 MEMBER RELIS: SO EVEN -- LET'S JUST SAY
5 IT'S BULK. I THOUGHT -- NOW I'M NOT CLEAR, BUT
6 DOES FOOD AND AG MAKE THE DISTINCTION? THEY
7 REGULATE BAGGED PRODUCT, BUT I KNOW THERE'S A
8 REPRESENTATIVE FROM FOOD AND AG HERE. YOU
9 REGULATE BULK TOO?

10 FOOD & AG: YES, AS A LIMING MATERIAL.

11 CHAIRMAN FRAZEE: LIMING AGENTS, I
12 BELIEVE YOU SAID.

13 FOOD & AG: YES.

14 CHAIRMAN FRAZEE: SO THAT'S SIMILAR.

15 MEMBER RELIS: NOW, COULD I JUST ASK.
16 NOW, OUR ACTIONS TODAY WOULD BE TO -- WOULD WE BE
17 ACTING ON BENEFICIAL USE AND EXCLUSION TIER PRIOR
18 TO SEEING WHAT -- THE ASH COALITION IS GOING TO, I
19 THINK, SUGGEST SOME LANGUAGE, I HEARD, ABOUT A
20 BRIGHT LINE.

21 MS. RICE: I WOULD ASSUME YOU'D WANT
22 FURTHER DEVELOPMENT TO DEFINE BENEFICIAL USE.

23 MEMBER RELIS: WE WANT TO DISCUSS THAT
24 FURTHER.

25 MS. RICE: THAT'S ESSENTIALLY WHAT

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1 THEY'RE WORKING ON, AS I UNDERSTAND IT, IS HOW YOU
2 DEFINE THAT IN A REGULATION TO ESTABLISH THAT
3 LINE.

4 CHAIRMAN FRAZEE: AND I THINK THAT NEEDS
5 SOME MORE WORK.

6 MEMBER RELIS: YES. I'D BE INTERESTED IN
7 WHAT THE LEA COMMUNITY SEES IN TERMS OF THAT --
8 THAT LINE, WHETHER THAT -- THEY SEE THE TOOLS THEY
9 NEED TO DO THE JOB.

10 MS. RICE: WOULD YOU BE LOOKING FOR US
11 THEN TO BRING THIS ISSUE BACK IN DECEMBER WITH
12 FURTHER DEVELOPMENT AROUND THE THREE POINTS?

13 CHAIRMAN FRAZEE: THAT ISSUE IS SO
14 COMPLEX, THAT IT NEEDS INPUT FROM ALL THE
AFFECTED

15 PARTIES IN DEFINING THAT LINE AND WHAT GOES INTO
16 THE EXCLUSION TIER.

17 MS. RICE: OKAY. SO WE WOULD BE BACK
18 BEFORE YOU IN DECEMBER JUST ON THAT POINT OF HOW
19 YOU WOULD DEFINE WHAT GOES INTO THE EXCLUSION
20 TIER.

21 MEMBER RELIS: WOULDN'T THAT GET INTO
THE
22 ISSUES OF THE PROTOCOLS THAT HAVE BEEN CALLED
23 FORTH? YOU WOULD HAVE THE MEASUREMENT, WHAT, THE
24 AGRICULTURAL REVIEW?

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25

MS. RICE: HOW YOU WOULD DEFINE --

1 MEMBER RELIS: YES. BENEFICIAL OR NOT.
2 DOESN'T THAT ALL COME UNDER --

3 MS. RICE: DEPENDING ON WHAT HAS COME UP
4 WITH BY INTERESTED PARTIES, VARIOUS FACTORS, I'M
5 SURE, COULD BE INCLUDED IN THAT DEFINITION OF
6 BENEFICIAL USE, SUCH AS MEETING CERTAIN CRITERIA
7 OR THE VARIOUS APPROACHES THAT ELLIOT DESCRIBED.
8 I'M SURE THERE ARE DIFFERENT WAYS TO DO IT. AND
9 WE COULD EITHER PRESENT A CONSENSUS APPROACH OR
10 IDEAS, DEPENDING ON HOW IT DEVELOPS OVER THE NEXT
11 COUPLE OF WEEKS.

12 MEMBER RELIS: WELL, IT SEEMS TO ME, AT
13 LEAST, THERE'S GOING TO BE ONE SUGGESTION, WE'VE
14 HEARD OTHER RECOMMENDATIONS, PULL THAT TOGETHER.
15 THERE MAY OR MAY NOT BE CONSENSUS OVER IT. AND
16 THAT'S A FINAL DECISION WE'D HAVE TO MAKE.

17 MS. RICE: RIGHT.

18 CHAIRMAN FRAZEE: WE NEED TO VOTE ON
19 THAT, OR IS NODDING OF HEADS SUFFICIENT TO --

20 MR. BLOCK: IT DEPENDS -- IN THE PAST
21 WHAT WE'VE DONE WITH THE LEGAL AUTHORITY ITEMS
22 WHEN WE'VE DONE THEM SEPARATELY IS THEY'VE GONE
23 THROUGH TO THE BOARD FOR APPROVAL BY THEM AS WELL
24 SEPARATE FROM ITEMS AND VOTES WE'VE DONE ON THE
25 REGULATIONS. SO I GUESS IT'S REALLY A QUESTION
OF

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1 HOW COMFORTABLE YOU FEEL. DO YOU FEEL THESE
THREE

2 POINTS ARE READY TO GO ON TO THE BOARD THIS
MONTH

3 FOR A VOTE, OR SHOULD THAT WAIT TILL DECEMBER
4 AFTER MORE FULLY DEVELOPED.

5 MEMBER RELIS: MAY I MAKE A
6 RECOMMENDATION ON THAT POINT? COULD WE
DISPATCH

7 WITH THE AUTHORITY TODAY BECAUSE THE OTHERS
8 REQUIRE SOME MORE WORK, BUT I DON'T SENSE THAT
9 WE'RE DOUBTING OUR AUTHORITY, AND WE NEED TO
10 AFFIRM THAT BY VOTE.

11 MR. BLOCK: THAT COULD BE DONE TODAY
AND

12 THEN SEND IT ON TO THE BOARD. YOU WOULD
PROBABLY

13 WANT, JUST FOR COMPLETENESS, ALSO INCLUDE --
THE

14 STAFF RECOMMENDATIONS OUTLINE FIVE DIFFERENT
15 AREAS: DISPOSAL AND TRANSFER STATIONS,
16 MANUFACTURING, AND OTHER USES, IN ADDITION TO
THE

17 LAND APPLICATION. SO YOU COULD CONFIRM OUR
18 AUTHORITY ON THOSE AS WELL AS ADDING THE LAND

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19 APPLICATION. SO THE AUTHORITY ISSUE IS TAKEN
CARE

20 OF, AND THEN THE REST OF IT REALLY WE CAN DEAL
21 WITH IT IN A SEPARATE ITEM AND THEN ALSO IN THE
22 CONTEXT OF REGULATIONS.

23 MEMBER RELIS: YOU THINK IT'S GOING TO
BE

24 READY ALL AS ONE PACKAGE?

25 MEMBER PENNINGTON: BRING IT BACK TO
THIS

1 BOARD IN DECEMBER. BRING IT BACK TO THE
2 COMMITTEE.

3 MEMBER RELIS: BRING THE WHOLE PACKAGE
4 BACK IN A MONTH, NOT GO RIGHT TO THE BOARD THIS
5 MONTH.

6 MEMBER PENNINGTON: THE OTHER WAY.

7 CHAIRMAN FRAZEE: WE HAVE A TIME LINE
8 GOING ON THE REG PACKAGE. CAN WE ACCOMMODATE ALL
9 OF THIS?

10 MS. RICE: WELL, WE HAVE THE COMMENT
11 PERIOD ENDING, IF I RECALL, DECEMBER 11TH, SO IT
12 SOUNDS AS THOUGH WE WOULD BE IN A CONTEXT PERHAPS
13 OF BRINGING THE REGULATIONS BACK WITH SUGGESTIONS
14 FOR REVISIONS BASED ON YOUR DIRECTION AND WORKING
15 WITH INTERESTED PARTIES BETWEEN NOW AND THE
16 DECEMBER COMMITTEE MEETING.

17 MEMBER RELIS: AND THEN IT WOULD NOT --
18 WE WOULD NOT BE FORWARDING TO THE FULL BOARD THIS
19 MONTH. THAT'S FINE.

20 CHAIRMAN FRAZEE: IS THERE A CONSENSUS
ON
21 THAT?

22 MEMBER PENNINGTON: YEAH, I THINK THERE
23 IS.

24 CHAIRMAN FRAZEE: FOR THE RECORD, RATHER
25 THAN TRYING TO PHRASE A MOTION, WE'LL ASSUME

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1 THERE'S SUFFICIENT DIRECTION FOR THIS. OKAY. WE
2 ARE NOW AT 11:35.

3 MEMBER PENNINGTON: 12:35.

4

5 (END OF ITEM 7 AS 12:35 P.M.

6 REMAINING ITEMS WERE HEARD AND REPORTED, BUT NOT
7 HEREIN TRANSCRIBED.)

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